

LEGAL INTERVENTION IN POVERTY ALLEVIATION: ENRICHING THE POOR THROUGH LAW

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Poverty can be regarded as the single most universal phenomenon forming an unvarying and uniform thread that transcends all boundaries and nations. A whole gamut of complexities is encompassed by the single word 'poverty'. India's plunge into mass poverty manifested during the colonial era and markedly accelerated throughout that phase. A poverty alleviation agenda involves several distinct essentials: first, it is crucial to define poverty for a particular region, which can be done only if the specific causative factors are underlined. Based on this understanding, a mode of measurement needs to be devised to identify the poor. Only when these aspects have crystallized, is it possible to design and implement intervention programmes. It is now realized that a collaborative measure of emphasis on accelerated growth and a direct interventionist-safety net procedure is the proper approach to optimize the control strategies. Lastly, it needs to be ensured that the institutions executing these measures complement the policy stance. India as a welfare state is committed to the development of its people. The constitutional responsibility is reflected via legislations and development policies. During the last five decades, India's tryst with poverty has met with chequered responses. It would, however, be incorrect to say that all poverty reduction programmes have failed.

I. INTRODUCTION

Poverty is a universal phenomenon; not one country has been able to assert to be entirely unfettered by poverty. The brunt of poverty on human existence can be gauged from the fact that the United Nations ('UN') designated 1996 as the International Year for the Eradication of Poverty and 1997-2006 as the Decade for the Eradication of Poverty, affirming that "eradicating poverty is an ethical, social, political and economic imperative of humankind."¹ Regrettably, as can be observed,

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¹ G.A. Res.51/178, U.N. Doc. A/RES/51/178 (February 11, 1997).

since the aspiration was far from being met, the UN pushed the deadline to 2015.² India's plunge into mass poverty manifested during the colonial era and markedly accelerated throughout that phase leading Dadabhai Naoroji to write his critically resented paper as far back as 1876.³ In the 1930s, Pt. Jawaharlal Nehru expressed India's state of affairs as "A servile state...her people poor beyond compare, short-lived and incapable of resisting disease and epidemic, illiteracy rampant, vast areas devoid of all sanitary or medical provision, unemployment on a prodigious scale, both among the middle classes and the masses." Later in his historic 'Tryst with Destiny' speech Pt. Nehru reminded the nation that the service of India means the ending of poverty, ignorance, disease and inequality of opportunity. More than five decades later, however, Mr. A.B. Vajpayee in a clear echo of the First Prime Minister's enunciation was forced to declare that "I have a vision of an India free of poverty, illiteracy and homelessness,"⁴ thus affirming Jean Drèze and Amartya Sen's belief that "the task that Nehru had identified remains, alas, largely unaccomplished."⁵

II. PREREQUISITES FOR POVERTY ALLEVIATION

A poverty alleviation agenda involves several distinct essentials: first, it is crucial to define poverty for a particular region, which can be done only if the specific causative factors are underlined. Based on this understanding, a mode of measurement needs to be devised to identify the poor. Only when these aspects have crystallized is it possible to design and implement intervention programmes.

A. DEPICTION AND CHARACTERIZATION OF POVERTY

Defining poverty has been an ongoing endeavour. The definitions have altered but slightly, in their intent, objective and outcome, although they might have changed in their manifestation. From Adam Smith⁶ to Amartya Sen,⁷ all

² United Nations, *2015 Millennium Development Goals*, available at <http://www.un.org/millenniumgoals/poverty.shtml> (Last visited on July 29, 2010).

³ DADABHAI NAOROJI, *THE POVERTY OF INDIA* (1876).

⁴ The Planning Commission of India, *India Economic Road Map: The Next Five Years 2002-2007*, December 21, 2002, available at http://planningcommission.gov.in/plans/planrel/pl_roadmap.pdf (Last visited on November 21, 2010).

⁵ J. DREZE & A. K. SEN, *INDIA, ECONOMIC DEVELOPMENT AND SOCIAL OPPORTUNITY I* (1995).

⁶ See ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* 519 (1776) (By necessities I understand, not only the commodities which are indispensably necessary for the support of life, but whatever the custom of the country renders it indecent for creditable people, even of the lowest order, to be without...Under necessities therefore, I comprehend, not only those things which nature, but those things which the established rules of decency have rendered necessary to the lowest rank of people).

⁷ See AMARTYA SEN, *INEQUALITY RE-EXAMINED* 109-110 (1992) ([P]overty as the failure of basic capabilities to reach certain minimally acceptable levels. The functionings relevant to

theoreticians are unanimous in their opinion that poverty is a genuine deprivation of life's basic necessities and incapacity to meet minimum biological, social, and cultural needs. The perception of basic necessities, however, varies; what some societies consider as necessities may perhaps be regarded as extravagance or opulence in others. Moreover, within the same society, when sub-groups become used to a certain standard of living, that level of existence becomes a necessity, leading to the propensity of a measured but steady ascent in the benchmark level of what is considered as 'basic necessities'.⁸

A broad-spectrum range of deficiencies and disadvantages of which, poverty is only one component is termed 'deprivation'. The other constituents include social inferiority, isolation, physical weakness, vulnerability, seasonality, powerlessness and humiliation.⁹ Where the indigent are concerned, the majority of these dimensions are by and large present in association. This reflection highlights the far-reaching tentacles of poverty and alters the entire complexion of poverty dynamics. It divests one of all prospects of advancement and makes them increasingly vulnerable thus embroiling them in a vicious cycle. In fact, now, 'social exclusion' is the term employed to refer to such a state of affairs.

These relativities have come to be reflected in the modern trends of poverty evaluation, wherein, the concept of poverty has been determined to be a multi-dimensional issue. The UN and its agencies approach poverty from a more integrative perspective based on human dignity¹⁰ expressed in terms of social, economic, cultural and political parameters.¹¹ It has been highlighted by the Indian judiciary in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*¹²

this ... can vary from such elementary physical ones as being well-nourished, being adequately clothed and sheltered, avoiding preventable morbidity, etc., to more complex social achievements such as taking part in the life of the community, being able to appear in public without shame, and so on).

⁸ See JOHN K. GALBRAITH, *THE AFFLUENT SOCIETY* 235 (1958) (In part poverty is a physical matter but it is wrong to rest everything on absolutes. People are poverty-stricken when their income, even if adequate for survival, falls markedly behind that of the community. Then they cannot have what the larger community regards as the minimum necessary for decency; they cannot wholly escape, therefore, the judgment of the larger community that they are indecent).

⁹ Robert Chambers, *Poverty and Livelihoods: Whose Reality Counts*, available at http://www.ucl.ac.uk/dpu-projects/drivers_urb_change/urb_society/pdf_liveli_vulnera/IIED_Chambers_poverty.pdf (Last visited on August 13, 2010).

¹⁰ Human Rights and Extreme Poverty, G.A. Res.53/146, (March 8, 1999) (extreme poverty and exclusion from society constitute a violation of human dignity... surmounting extreme poverty constitutes an essential means to the full enjoyment of political, civil, economic, social and cultural rights, and reaffirms the interrelationship between these goals).

¹¹ Poverty and the International Covenant on Economic, Social and Cultural Rights, E/C.12/2001/10 (May 10, 2001) (A human condition characterized by the 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).

¹² *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

that “the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.” Dr. Justice A.R. Lakshmanan¹³ considers poverty as a multi-faceted human rights violation.¹⁴ The Indian Planning Commission too has recognized the need of this broader perspective of poverty.¹⁵

B. MEASUREMENT OF POVERTY

To append to the woes of ambiguity in the definition of poverty is the difficulty in identifying the relevant mode of measurement. Translating the abstract notion of poverty to physical parameters is not so uncomplicated to accomplish. The most commonly applied technique to assess poverty is based on incomes which mark the standard distinction between absolute and relative definitions of poverty. The former approach centres on the lack of basic necessities while the latter stresses inadequacy compared to average living standards. The choice of either of these two options has significant consequences on strategy initiatives, as absolute poverty may be reduced by economic growth, while relative poverty will only lessen when income disparity diminishes. Additionally, the requirements to satisfy basic needs vary across spatial, temporal and societal contours. Therefore, each nation uses parameters that are suitable to its level of development, societal norms and values; these too need to be updated over time to match the contemporary requirements. Next, even within the same nation, poverty combative approaches formulated to cater to a particular society are not usually transferable

¹³ Former Judge, Supreme Court of India and Chairman, Law Commission of India.

¹⁴ DR. JUSTICE A.R. LAKSHAMANAN, VOICE OF JUSTICE 121-122 (2006) (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).

¹⁵ See Planning Commission of India, *10th Five Year Plan, 2002-07* available at http://planningcommission.gov.in/plans/planrel/fiveyr/10th/volume1/10th_vol1.pdf (Last visited on November 21, 2010) (Although growth has strong direct poverty reducing effects, the frictions and rigidities in the Indian economy can make these processes less effective, and the Tenth Plan must therefore be formulated in a manner, which explicitly addresses the need to ensure equity and social justice. A three pronged strategy for attaining equity and social justice along with high rates of growth is proposed for the Tenth Plan period).

to other societies; each society requires a tailor-made option. Besides regional and native variations, societal diversity in mindset also needs to be considered.

For quite a long time, since its inception, the means to determine poverty remained unchanged despite conceptual and methodological problems. What was not comprehended though appreciated was that, poverty, being a multi-dimensional concept, should not be measured through the pathway of means but according to the ends. In India, the initiation was done by focusing on economic mobility from which emerged the concept of income/consumption poverty line. After the development of initiatives, it was soon realized that, this definition captured a limited perspective and the premise of 'income poverty' therefore must be broadened into the tenet of 'human poverty'. Thus, now the word 'poverty' began to be used in two main connotations, in a constricted sense for purposes of measurement where it was defined as low income or consumption and as an expansive blanket word to express the complete continuum of deprivation. If one concurs with the former, then the direction of control strategies would centre on economic mobility, while, if one has leanings towards the latter, then the focus would be on social mobility. This brought in its wake the necessity for development and introduction of a scheme of indicators for poverty appraisal from a new perspective and soon transcended into *policied* initiatives like the Minimum Needs Approach Programme. Additionally, the Rural Development Ministry, in 1997 recommended conducting of survey of below poverty line families on the basis of multiple criteria. With the emergence of the concept of the 'Human Development Index' and 'Human Poverty Index', a composite measure reflecting health, education and economic attainment for the country, came to the fore, in an attempt to portray poverty in its various dimensions, including access to minimum services.¹⁶

C. POVERTY DYNAMICS

Caste status,¹⁷ land,¹⁸ household occupational status and gender are certain correlatives of poverty which are both its indicator and causal agent and necessitate concerted deliberations on the concept, in order to achieve the correct and proper mode of remedial measures.

¹⁶ United Nations Development Programme, *Human Development Report* (1997) available at <http://hdr.undp.org/en/reports/global/hdr1997/chapters/> (Last visited on November 21, 2010) (The human development index measures the average achievements in a country in three basic dimensions of human development-longevity, knowledge and a decent standard of living. The human poverty index measures deprivation in basic human development in the same dimensions as the HOI).

¹⁷ The Constitution of India, Art. 15 (prohibits discrimination on grounds of race, caste, sex or place of birth); Art. 16 (provides for equality of opportunity in matters of public employment); Art. 17 (abolishes untouchability).

¹⁸ The Constitution of India, Art. 31A and Art. 31B (provisions for land reforms).

Additionally, certain technical issues are a cause of concern in correct poverty ascertainment. The World Bank has regularly been reporting the number of people living below the international poverty line, colloquially known as ‘\$1/day’ for several years. The method used to calculate poverty, however, may have serious limitations, yielding unreliable estimates. The World Bank’s methodology might have a tendency to overestimate the purchasing power of the poor relative to what they need to buy.¹⁹

III. THE ALLEVIATION AGENDA

India as a welfare state is committed to the development of its people. The constitutional responsibility is reflected via legislations and development policies. It is now realized, that a collaborative measure of emphasis on accelerated growth and direct interventionist-safety net procedure is the proper approach to optimize the control strategies. Furthermore, it needs to be ensured that the institutions executing these measures complement the policy stance.

The judiciary has kept an intense scrutiny and ensured that this constitutional mandate is properly enforced and any friction between the legislature and the executive is eased. Building upon Article 21, the judiciary has adopted an expansive interpretation bringing within its ambit almost all facets of poverty – direct or indirect.

Constitutional Espousal

Though ‘poverty’ as a term has not been mentioned in the Indian Constitution, the Preamble, the Fundamental Rights and the Directive Principles of State Policy stand testimony to the welfare state model. After observing the success of guaranteeing rural wage labour under poverty alleviation schemes, the National Commission to Review the Working of the Constitution proposed a constitutional obligation on the State to provide to the citizens ‘Rural Wage Labour’ as a Fundamental Right and proposed the introduction of a new Art. 21B for this purpose.²⁰ The judiciary has stated in *Basheshar Nath v. Commissioner of Income Tax Delhi*,²¹ that “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. . . Any person. . . can challenge the deprivation as offending the right to life conferred by Art 21.” Then again, it has

¹⁹ For a critique see Thomas W. Pogge & Sanjay G. Reddy, *Unknown: The Extent, Distribution, and Trend of Global Income Poverty*, available at http://www.etikk.no/globaljustice/papers/GJ2003_Thomas_Pogge_with%20Sanjay_Reddy_Unknown_-_The_Extent,_Distribution_and_Trend_of_Global_Income_Poverty.pdf, (Last visited on August 13, 2010).

²⁰ National Commission to Review the Working of the Constitution, *A Consultation Paper on Social Security and Employment*, (September 26, 2001) available at <http://lawmin.nic.in/ncrwc/finalreport/v2b1-6.htm> (Last visited on November 21, 2010).

²¹ *Basheshar Nath v. The Commissioner of Income Tax Delhi*, 1959 (1) SCR Supp 528.

been emphasized in *Olga Tellis v. Bombay Municipal Corporation*,²² that “the country had so far not found it feasible to incorporate the right to livelihood as a fundamental right in the Constitution because it had so far not attained the capacity to guarantee it, and not because it considered it any the less fundamental to life. Advisedly, therefore, it has been placed in the chapter on Directive Principles, under Art. 41, which enjoins upon the State to make effective provision for securing the same “within the limits of its economic capacity and development”. Thus even while giving direction to the State to ensure the right to work, the Constitution-makers thought it prudent not to do so without qualifying it.

The constitutional responsibility is reflected via two modes: firstly, legislations reflecting the broader and comprehensive perspective, and secondly, development policies and plans, showcasing the tailor-made option.

A. LEGISLATIONS

Legislations have been formulated with the poor as a focal point for several decades now; in fact the agenda of the 15th Law Commission specifically stated that its terms of reference were Law and Poverty which entailed: firstly, examining the laws which affect the poor and carrying out post-audit for socio-economic legislation and secondly, to take all such measures as may be necessary to harness law and the legal process in the service of the poor. The most prominent of pro-poor legislations is the Legal Services Authorities Act, 1987 that gives statutory effect to the provisions of Art. 39A of the Constitution of India and aims at providing free and comprehensive legal services to the indigent sections of the population. Additionally, almost all legislations operating in any field whatsoever, whether it be labour laws,²³ civil law,²⁴ criminal law,²⁵ are bound to have certain provisions dealing with indigent issues.

Fundamentally, it is through the social laws that a direct impact is ensured on poverty-related issues. Several legal provisions dealing with issues of caste status,²⁶ land reforms,²⁷ child labour²⁸ and gender equality are in existence. Relatively

²² *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

²³ See e.g. Minimum Wages Act 1948, 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.

²⁴ See e.g. Order XXXIII Code of Civil Procedure, 1908: Suits by Indigent Persons.

²⁵ See e.g. § 304 Code of Criminal Procedure, 1973: Legal aid to accused at State expense in certain cases.

²⁶ See e.g. The Constitution of India, Art.15 (prohibits discrimination on grounds of race, caste, sex or place of birth); Art. 16 (provides for equality of opportunity in matters of public employment); Art. 17 (abolishes untouchability).

²⁷ See e.g. The Constitution of India, Art.31A and Art.31B (provisions for land reforms).

²⁸ See e.g. The Constitution of India, Art. 14 (prohibits employment of children below the age of 14 years in any factory, mine or any other hazardous employment); Art. 39-E (The

recently, the National Rural Employment Guarantee Act, 2005 was passed providing specific guaranteed wage employment every year to households whose adult members volunteer to do unskilled manual work. Also, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was passed aimed at ensuring security of tenure and access to minor forest produce and other related rights for tribals and other traditional forest dwellers. Further legislations with direct emphasis on poverty are on the anvil; the foremost being, the National Food Security legislation, providing for subsidized food-grains to the poor.

What Ails the Legislative Approach

The legislative approach suffers from the inherent pitfalls of democracy. Political lobbying and the constant friction between the ruling party and the opposition have an immense effect on the legislations being passed and the form that they take. The proposed National Food Security Act has already been diluted in the face of political pressure.²⁹ Furthermore, delinking food grains security from nutrition security greatly reduces the intent and efficacy of the National Food Security Act. Critics are of the opinion that even the proposed allocation of food-grains and the coverage of this legislative proposal are not sufficient.³⁰ Furthermore, the legislature has on occasion dragged its feet in passing legislations. A case in point is the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 where the Supreme Court intervened and directed the government to pass the Act by June 2011.³¹ Lastly, a change of powers of the ruling government sometimes shelves certain legislations entirely. Furthermore, there are numerous instances where the legislative intent is not transcended into executive implementation; for instance, a recent study suggests that the key intent of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been completely undermined due to apathy or intentional non-implementation by the governance structures.³²

state shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused and that they are not forced by economic necessity to enter vocations unsuited to their age and strength); The Child Labour (Prohibition and Regulation) Act, 1986.

²⁹ The Times of India, *Poor Get Less Food from Sonia's NAC*, October 24, 2010, available at <http://timesofindia.indiatimes.com/india/Poor-get-less-food-from-Sonias-NAC/Art.show/6800269.cms> (Last visited on December 29, 2010).

³⁰ See Sachin Kumar Jain, *India's National Food Security Act: Entitlement of Hunger*, April, 2010 available at <http://www.ethicsinaction.asia/archive/2010-ethics-in-action/vol.-4-no.-2-april-2010/indias-national-food-security-act-entitlement-of> (Last visited on December 29, 2010); Himanshu, *The muddle in food security*, October 26, 2010 available at <http://www.livemint.com/2010/10/26231238/The-muddle-in-food-security.html> (Last visited on December 29, 2010).

³¹ J. Venkatesan, *Hawkers' Fundamental Right Can't be Left in Limbo: Court*, October 20, 2010 available at <http://www.thehindu.com/news/national/Art.838555.ece> (Last visited on December 29, 2010).

³² Council for Social Development, *Summary Report on Implementation of the Forest Rights Act*, September 2010 available at <http://www.forestrightsact.com/component/k2/item/15> (Last visited on December 29, 2010).

B. DEVELOPMENTAL PROGRAMMES

Hardly any Five Year Plan has been passed which omitted to lay emphasis on alleviation of poverty; what altered though was the mode of accomplishing this agenda. Initially, the 'trickle-down concept' was espoused,³³ when this strategy could not realize the set targets successfully, the need for 'direct intervention' in favour of the poor was recognized. Though these approaches buttress each other, there was no enterprise to integrate them. Post the economic crisis of the early nineties, the mode of redressal of poverty mitigation was reconceptualised. Though none of the phases of the development agenda has been fully withdrawn, the emphasis on any one particular strategy is being gradually reduced and an integrated endeavour being adopted with more import on a holistic approach.

The initial holdup in policy formulation cannot altogether be blamed on the planners. In the aftermath of independence, India had to contend with multiple variables viz. fiscal dilemmas, the political mindset and leanings, wars and the international state of affairs. Thereafter, the direct interventionist interlude laid stress upon a multi-pronged approach; it embarked upon crafting an income generating asset base via self-employment³⁴ and creating prospects of income transfer through wage employment and infrastructure development.³⁵ Further, area development

³³ Alok Kumar Sharma, *Assessment of Rural Poverty in India* (Country study paper presented at Regional Expert Group meeting of United Nations Economic and Social Commission for Asia and the Pacific, 1997) available at http://www.unescap.org/rural/doc/beijing_march97/india.PDF (Last visited on September 21, 2010) ("The strategy emphasized investment in heavy and capital goods industries to achieve rapid industrialization and economic development. The development of heavy industries was synonymous with industrialization. Development along socialist lines was presumed to expedite economic growth, expand employment opportunities and reduce disparities and concentration of economic power").

³⁴ 6th Five Year Plan, *Integrated Rural Development Programme*, 1980, 6th Five Year Plan, *Development of Women & Children in Rural Areas Programme*, 1980, 6th Five Year Plan, *Training of Rural Youth in Self Employment Programme*, 1979, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/6th/6planch11.html> (Last visited on November 21, 2010).

³⁵ 4th Five Year Plan, *Crash Schemes for Rural Employment*, 1971, 4th Five Year Plan, *Pilot Intensive Rural Employment Programme*, 1975, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/4th/4thindex.html> (Last visited on November 21, 2010); Ministry of Rural Development, *Drought-Prone Area Programme*, 1973, available at <http://rural.nic.in/annualrep0304/chapter19.pdf> (Last visited on November 21, 2010); Ministry of Rural Development, *Desert Development Programme*, 1977, available at <http://rural.nic.in/annualrep0304/chapter20.pdf>, (Last visited on November 21, 2010); 6th Five Year Plan, *National Rural Employment Programme*, 1980, 6th Five Year Plan, *Rural Landless Employment Guarantee Programme*, 1983, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/6th/6planch11.html> (Last visited on November 21, 2010); 7th Five Year Plan, *Jawahar Rozgar Yojana*, 1989, 7th Five Year Plan, *Indira Awaas Yojana*, 1985, 7th Five Year Plan *Million Wells Scheme*, 1988, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/8th/vol2/8v2ch2.htm> (Last visited on November 21, 2010).

activities,³⁶ target group development programmes³⁷ and programmes for special groups³⁸ were also emphasized upon. Land reforms were also an essential thrust of these programmes. Subsequently, programmes for social security³⁹ and to provide basic infrastructure for better quality of life were also initiated.

Feedback studies revealed that direct intervention could not succeed only by enabling the poor; structured schemes had to be developed through which the poor could assist themselves. Moreover it was realized that poverty would have a propensity to lessen by advancing contact with improved means.⁴⁰ With the recognition of this multi-faceted projection of poverty,⁴¹ there was renewed focus on human development with emphasis on health, education, minimum needs and basic amenities, including welfare measures raising the social status of the weak and poor and compensating them for their inadequate access to growth.⁴² In addition, programmes were conceptualised to make available proper water supply, sanitation and housing and reduce regional disparities.⁴³

³⁶ 2nd Five Year Plan, *Intensive Agriculture District Programme*, 1960, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/2nd/2planch13.html> (Last visited on November 21, 2010); 3rd Five Year Plan, *High Yielding Varieties Programme*, 1965, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/3rd/3planch19.html> (Last visited on November 21, 2010); Ministry of Water Resources, *Command Area Development Programme*, 1974, available at <http://mowr.gov.in/index3.asp?sslid=340&subsublinkid=350&langid=1> (Last visited on November 21, 2010); Ministry of Rural Development, *National Wastelands Development Board*, 1985, available at <http://rural.nic.in/annualrep0304/chapter17.pdf> (Last visited on November 21, 2010).

³⁷ 4th Five Year Plan, *Small Farmers Development Agency*, 1971, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/4th/4planch7.html> (Last visited on November 21, 2010); 5th Five Year Plan, *Marginal Farmers and Agricultural Labourers Development Agency*, 1975, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/5th/5planch5.html> (Last visited on November 21, 2010).

³⁸ 5th Five Year Plan, *Special Component Plan*, 1979, 5th Five Year Plan, *Tribal Sub-Plan*, 1977, available at <http://planningcommission.gov.in/plans/planrel/fiveyr/5th/5planch5.html> (Last visited on November 21, 2010).

³⁹ Ministry of Rural Development, *National Social Assistance Programme*, 1995, available at <http://www.drd.nic.in/Guide/gnsap.htm> (Last visited on November 21, 2010) (The Programme includes National Old Age Pension Scheme, National Family Benefit Scheme, National Maternity Benefit Scheme).

⁴⁰ Cooperative linkages at the rural-urban level have been done. *E.g.* Operation Flood Project, 1970, available at http://www.indiadairy.com/ind_operationflood.html (Last visited on November 21, 2010).

⁴¹ See *supra* note 12 and accompanying text (The 10th Five Year Plan has three strands- faster agricultural growth, more employment opportunities and special programmes for the poorest groups).

⁴² Planning Commission of India, *9th Five Year Plan*, available at <http://planningcommission.nic.in/plans/planrel/fiveyr/9th/vol2/v2c3-2.htm> (Last visited on November 21, 2010) (The Minimum Needs Programme (MNP) was launched in the Fifth Five Year Plan. Initially, there were eight components of MNP, viz., elementary education, rural health, rural water supply, rural electrification, rural roads, rural housing, environmental improvement of urban slums and nutrition. While adult education was added to the list of MNP components in the Sixth Plan, rural domestic energy, rural sanitation and public distribution system were added during the Seventh Plan).

Poverty alleviation is not merely a passive redistributive function; it goes beyond simplistic targeted programmes and involves both capacity-improving and safety-net policies. While programmes aimed at accelerating growth and directing its benefits will help to reduce poverty in the long term, direct redistribution such as providing basic education, healthcare and employment policies provide short-term safety nets to the poor. Thus circuitously, the wheel has come a full circle as the planners are attempting both macro and microeconomic adjustments and patterning an arrangement operational on the foundations of both the trickle-down effect and direct intervention along with proactive voluntary initiatives.

1. Crucial Landmarks in Development Policies

The concern with the low efficacy of the anti-poverty programmes transcended into decentralisation and as a concept has been widely promoted and accepted. It was envisioned that a shift in the command base in planning and implementation from the bureaucracy to a local democratic institution, would lead to improved accessibility. Improving upon the Community Development Projects of 1952, the 73rd and 74th Amendment to the Constitution of India imparted statutory status to decentralisation. Secondly, the Public Distribution System which evolved in the wake of food grain shortages in the 1960s was a blend of producer-price support and consumer subsidy and was promoted as a safety net facility; it was later streamlined and a targeted Public Distribution System was introduced in 1997 under which families below the poverty line were specifically addressed. Thirdly, policies eliminating child labour and enhancing employment opportunities for women and disadvantaged sections of the population have also been given high priority.⁴⁴ Finally, increasing influences of globalization, privatization and

⁴³ Ministry of Rural Development, *The Accelerated Rural Water Supply Programme*, 1972, available at <http://rural.nic.in/annualrep0304/chapter26.pdf> (Last visited on November 21, 2010); Ministry of Rural Development, *The Central Rural Sanitation Programme*, 1986, available at <http://rural.nic.in/annualrep0304/chapter26.pdf> (Last visited on November 21, 2010); Ministry of Rural Development, *Rajiv Gandhi National Water Mission*, 1986, available at <http://rural.nic.in/annualrep0304/chapter26.pdf> (Last visited on November 21, 2010); Ministry Of Health & Family Welfare, *National Health Policy*, 1983, available at <http://mohfw.nic.in/kk/95/ii/95ii0101.htm> (Last visited on November 21, 2010); Ministry of Housing and Urban Poverty Alleviation, *National Housing Policy*, 1988, available at <http://mhupa.gov.in/policies/index2.htm> (Last visited on November 21, 2010); Ministry of Rural Development, *Indira Awaas Yojana*, 1985, available at <http://rural.nic.in/rh.htm> (Last visited on November 21, 2010).

⁴⁴ Central Social Welfare Board, *Awareness Generation Projects for Rural and Poor Women*, 1986, available at <http://cswb.gov.in/index2.asp?slid=789&sublinkid=549&langid=1> (Last visited on November 21, 2010); 7th Five Year Plan, *Border Area Development Programme*, available at <http://mha.nic.in/pdfs/BADP-RGuid-0209.pdf> (Last visited on November 21, 2010); Ministry of Human Resource Development, *Kishori Shakti Yojana*, 2000, available at <http://wcd.nic.in/KSY/ksyintro.htm> (Last visited on November 21, 2010); Ministry of Women and Child Development, *Rashtriya Mahila Kosh*, 1993, available at <http://rmk.nic.in/> (Last visited on November 21, 2010); *Indira Mahila Yojana* (1995), available at <http://wcd.nic.in/imy.htm> (last visited on November 21, 2010); Ministry of Women

liberalization has led the State to lose some of its pre-eminence as a developmental agency and opened the gates for other actors viz. global multilateral agencies, international and national NGOs, and private companies.

2. What Ails the Development Programmes

The programmes suffer from numerous defects including sub-critical investments, unviable projects, lack of technological and institutional capabilities in designing and executing projects, poor targeting of beneficiaries etc.⁴⁵ Political leanings and interest groups play a strong role in the materialization of strategies and implementation of development policies. Accordingly, the strategies of development policies change in light of possible manoeuvring with succession and changes in polity. Besides, the programmes usually are beset with problems like corruption,⁴⁶ improper direction, lack of sectoral integration and undue emphasis on time-bound target achievement.⁴⁷ In fact, a relatively recent initiative on the part of the Planning Commission to curtail this growing trend of unaccountability too died a political death.⁴⁸ Highlighting this, the 10th Five Year Plan states that weak governance, manifesting itself in poor service delivery, excessive regulation and uncoordinated and wasteful public expenditure is one of the key factors hindering growth and development. Casebooks are rife with instances where the judiciary has had to step in and ensure that the executive arm does its job properly and ensures sufficient facilities to the indigent. In *People's Union for Civil Liberties v. Union of India*,⁴⁹ the fact that starvation deaths had

and Child Development , *Mahila Samakhya Programme*, 1988, available at <http://www.education.nic.in/ms/ms.asp> (Last visited on November 21, 2010).

⁴⁵ Planning Commission of India, *Approach Paper to the Tenth Five-Year Plan*, 2001, available at <http://planningcommission.nic.in/plans/planrel/appdraft.pdf>, (Last visited on August 13, 2010).

⁴⁶ See Times of India, *Food grain scam: Mayawati under pressure to act*, December 7, 2010 available at <http://timesofindia.indiatimes.com/india/Food-grain-scam-Mayawati-under-pressure-to-act/Art.show/7057817.cms> (Last visited on December 29, 2010).

⁴⁷ See Nilakantha Rath, *Garibi Hatao: Can IRDP Do It?*, ECONOMIC & POLITICAL WEEKLY, February 1985, 238; Amit Hazra, *Poverty and Politics-Some Empirical Observations*, (Paper presented at the Conference Livelihoods and Poverty Reduction: Lessons from Eastern India, September 25-27,2001) available at http://www.anthrobase.com/Txt/H/Hazra_A_01.htm, (Last visited on August 13, 2010).

⁴⁸ See N.C. Saxena & John Farrington, *Trends and Prospects for Poverty Reduction in Rural India: Context and Options* (Working Paper- 198, May 2003), available at <http://www.odi.org.uk/resources/download/1766.pdf>, (Last visited on August 13, 2010) (In May 1999 the Planning Commission decided to link the central [financial] assistance...with performance...to improve accountability and transparency, and to make the civil service more productive and pro-poor... However, the States resented such monitoring by the Planning Commission, and pressurised the Planning Commission to continue approving central assistance without linking it to output. The circular issued in May 1999 died a natural death).

⁴⁹ People's Union for Civil Liberties v. Union of India, Writ Petition (Civil) No. 196 of 2001 (SC Interim Order, May 2, 2003) available at <http://www.righttofoodindia.org/orders/may203.html> (Last visited on November 22, 2010).

occurred in Rajasthan despite excess grain being kept aside for famine was agitated. Various schemes for food distribution throughout India were also non-functional. The Supreme Court, noting the right to life, stated “would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation?”. The Court found failure by the government to implement and resource various food schemes and ordered specific measures to be effected. Though efforts have been made to reverse the limitation of the top-down approach and to enable the people to participate more actively in the implementation of the development programmes, actualization of financial and administrative powers to these local bodies has been dismally low. Local democratic institutions are still prone to capture by the village elite and are generally ineffectual in influencing their individualistic styles of functioning. The bureaucracy still maintains the upper hand in expenditure disbursements and the weakness in the democratic process provides them room to manipulate the welfare schemes and recipient beneficiaries.⁵⁰ There have been instances where the State itself denied to casual labourers the mandatory minimum pay. The Supreme Court intervened and stated that “such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starving wages. It may be that the casual labourer 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.”⁵¹ Paradoxically, even in a regime of decentralized governance, failures or partial success of such policy shifts find elaborate explanations, but, often the feed back is relegated to a corner in favour of fresh policy alternatives.⁵² In fact, in tune with this, recent government evaluations have recommended measures to rationalize the multiplicity of schemes and improve their effectiveness.⁵³

Poverty alleviation efforts also suffer from weak civil society action. Though the advent of the Right to Information Act, 2005 has eased the situation somewhat by empowering the people,⁵⁴ the state of affairs is still a far cry from perfect. Besides this, at times, the grim realities of life have to be contented with, wherein sometimes the impoverished themselves cause obstructions in the path of

⁵⁰ See Ravi S. Srivastava, *Anti-poverty Programmes in Uttar Pradesh: An Evaluation* (Report of the Planning Commission Research Project) available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN015022.pdf> (Last visited on August 13, 2010).

⁵¹ Daily Rated Casual Labour employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India, AIR 1987 SC 2342.

⁵² An example of this can be found in completely shelving of the Jayaprakash Narayan Committee on Community Development, submitted to the Government of India during mid fifties.

⁵³ See Planning Commission of India, *10th Five Year Plan, 2002-07*, available at http://planningcommission.gov.in/plans/planrel/fiveyr/10th/volume1/10th_vol1.pdf (Last visited on November 21, 2010).

⁵⁴ See David Caploe, *Indian Poor Helped Greatly by “Right to Know” Law*, July 5, 2010 available at <http://www.economywatch.com/economy-business-and-finance-news/indian-poor-helped-greatly-by-right-to-know-law-05-07.html> (Last visited on December 29, 2010).

proper implementation of pro-poor initiatives; a case in point being *Delhi Development Horticulture Employees' Union v. Delhi Administration*,⁵⁵ where the petitioners were employed under a limited period wage employment scheme for those below the poverty line. Afterwards, on the basis of the said employment, they claimed a right to regularization. The Court held that “this could not be allowed as it would frustrate the scheme itself. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasize that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc.” In tandem with this are instances where the interest groups who benefit out of poverty, attempt to prevent, restrict or divert the alleviating effects of such measures. An instance being, the case of *State of Gujarat v. Vora Saiyedbhai Kadharbhai with Somsinh Takhatsinh Rana*,⁵⁶ wherein the State Legislature in order to save the poverty stricken debtors from the clutches of non-institutional creditors, under a debt relief legislation relieved them of their debts to the extent found necessary and had their properties given as security for their debts returned from the creditors so that they could eke out their livelihood. The creditors approached the court contending that this was an unreasonable restriction on them, violative of Art. 19(1)(g) of the Constitution, which granted them a right to practise their profession. The Supreme Court held that “even if social legislations such as the one enacted are to make a few creditors victims of such legislation in one way or the other, the same cannot be regarded as an unreasonable restriction which cannot be imposed in respect of the rights exercisable by the citizens under Art. 19(1)(g).”

C. JUDICIAL CHECKS AND BALANCES

The judiciary has by default been charged with the unenviable task of keeping tabs on both the legislature and the executive as regards the poverty alleviation agenda. Furthermore, there have been several instances where the judiciary has been forced to take over the mantle of the other two powers and perform their functions. A key development in this regard has been where the judiciary adopted an expansive interpretation of Art. 21, bringing within its ambit almost all facets of poverty. The judiciary has rendered judgments focusing on poverty in its various facets, such as the right to food,⁵⁷ child labour,⁵⁸ beggars’

⁵⁵ *Delhi Development Horticulture Employees' Union v. Delhi Administration*, AIR 1992 SC 789.

⁵⁶ *State of Gujarat v. Vora Saiyedbhai Kadharbhai with Somsinh Takhatsinh Rana*, AIR 1995 SC 2208.

⁵⁷ *See Chameli Singh v. State of U.P* AIR 1996 SC 1051; *People's Union for Civil Liberties v. Union of India*, Writ Petition (Civil) No. 196 of 2001, available at <http://www.righttofoodindia.org/orders/may203.html> (Last visited on November 22, 2010).

⁵⁸ *See M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756.

rights,⁵⁹ debt-ridden farmer suicides,⁶⁰ the homeless,⁶¹ street vendors,⁶² cycle rickshaw pliers,⁶³ pavement dwellers,⁶⁴ slum dwellers⁶⁵ and ascertainment of below poverty line families.⁶⁶

What Ails Judicial Monitoring

Sometimes, the expectations from the judiciary are too high; to perform its functions in addition to correcting the legislative and executive stance, so as to uphold the aspirations of a population of more than a billion, a substantial portion of which is impoverished, is not an easy task. This task is further burdened by the fact that the executive and legislature are not always willing to maintain a complementary stand, or might even have separately motivated agenda of their own. A case in point lies in the continued reports of farmer suicides, which indicate that farmers are an impoverished lot. This coupled with increasing prices of all commodities would imply that there is shortage. Reports, however, indicate that there is actually a surplus of food grains, with India having ample buffer stocks.⁶⁷ In fact, food grains are deliberately being allowed to rot.⁶⁸ Clearly, there is much wrong in the Government's management of the food production and distribution mechanisms. Ironically, despite being a democracy, this does

⁵⁹ See *Ram Lakhan v. State* 137 (2007) DLT 173.

⁶⁰ See Indian Express, *Farmers' suicides: Can seek remedial measure, says SC*, January 19, 2010 available at <http://www.indianexpress.com/news/farmers-suicides-can-seek-remedial-measure/569033/> (Last visited on December 29, 2010).

⁶¹ See Indian Express, *No One Should Die due to Lack of Night Shelters: SC to Govt.*, December 17, 2010 available at <http://www.indianexpress.com/news/no-one-should-die-due-to-lack-of-night-shelt/725892/> (Last visited on December 29, 2010).

⁶² See Indian Express, *Street smart*, October 21, 2010 available at <http://www.indianexpress.com/news/street-smart/700516/> (Last visited on December 29, 2010).

⁶³ See Indian Express, *No curb on number of rickshaws: HC*, February 11, 2010 available at <http://www.indianexpress.com/news/no-curb-on-number-of-rickshaws-hc/578323/> (Last visited on December 29, 2010); Law is Geek, *New Law to Allow Cycle Rickshaws to Ply Across Delhi*, September 1, 2010) available at <http://www.lawisgreek.com/legal-news-new-law-allow-cycle-rickshaws-ply-across-delhi> (Last visited on December 29, 2010).

⁶⁴ See *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

⁶⁵ See *Sudama Singh & Ors v. Govt. of Delhi* WP(C) Nos.8904/2009, 7735/2007, 7317/2009 and 9246/2009, February 11, 2010, available at https://docs.google.com/fileview?id=0B6hXZkfslpLQMtI3ZGY5ZDEtMGQzZi00M2I2LWeyMGMtMjIzYTc3ZWMyZDkz&hl=en_GB (Last visited on December 29, 2010).

⁶⁶ See Indian Express, *Centre admits conflict with states over BPL norms*, October 19, 2010 available at <http://www.indianexpress.com/news/centre-admits-conflict-with-states-over-bpl-norms/699295/1> (Last visited on December 29, 2010).

⁶⁷ Sreejiraj Eluvangal, *Govt's Food Buffer Stocks Near Record Levels*, August 19, 2010, available at http://www.dnaindia.com/india/report_govt-s-food-buffer-stocks-near-record-levels_1425930 (Last visited on December 29, 2010).

⁶⁸ Hindustan Times, *Food Grains Rot in FCI Godowns across India*, July 27, 2010, available at <http://www.hindustantimes.com/Food-grains-rot-in-FCI-godowns-across-India/Art.1-578444.aspx> (Last visited on December 29, 2010).

not seem much different from the British management which caused the Bengal famines in 1770 and 1943. Furthermore, there are instances where the Government even lacked the compunction to give effect to the Supreme Court's efforts to rectify the situation.⁶⁹ In view of such blatant mismanagement, legislations such as the National Food Security Act would seem to be more of a lip service than to serve any actual purpose.

On the other hand, sometimes the judiciary can be overzealous, or its *diktats* too onerous to enforce, or of unascertainable dynamics and criteria. An example being the recent judgment of the Supreme Court which states that poverty could mitigate crime, even murder.⁷⁰ While laudable, such a judgment is restricted to a case by case analysis and subject to the leaning of the judge.

Lastly, it is not possible for the judiciary to be a universal watchdog. A complementing public initiative is a necessary requisite. While considerable public support has been forthcoming there is always scope for more.

IV. FALLOUT AND CONCLUSION

It is now a recognized fact, that poverty is a multi-faceted phenomenon going beyond the realms of lack of adequate income; it must be viewed as a state of deprivation spanning the social, economic and political profile of the people that precludes their effective participation as equals in the development process. This recognition has resulted in restructuring and reorganization of various poverty reduction programmes. The formidable challenge faced by India at the time of independence was in the form of a large subgroup of its population being poor. This was an institutional outcome as well as the colonial legacy. During the last six decades, India's tryst with poverty has met with chequered responses. It is quite obvious that the institutional interface dictated the performance. It would be incorrect to say that all poverty reduction programmes have failed. The growth of the middle class that was earlier virtually non-existent indicates that economic prosperity has indeed been promising in India, but the distribution of wealth has been extremely uneven. In the context of the new liberalized economic policy

⁶⁹ See Indian Express, *Do not get into policy formulation: PM to SC*, September 6, 2010 available at <http://www.indianexpress.com/news/do-not-get-into-policy-formulation-pm-to-sc/677895/> (Last visited on December 29, 2010) (It was not possible to give free foodgrains to all the poor, he said while answering a question on the order of the Apex court which had directed Agriculture Minister Sharad Pawar to distribute foodgrains to the poor instead of allowing them to rot).

⁷⁰ Dhananjay Mahapatra, *Poverty could mitigate crime, even murder: SC*, February 9, 2010 available at <http://timesofindia.indiatimes.com/india/Poverty-could-mitigate-crime-even-murder-SC/Art.show/5549996.cms#ixzz19FXvlxql> (Last visited on December 29, 2010) (The Bench further said, "The convicts...belong to an extremely poor background. One thing which is clear to us is that they have committed these crimes for want of money. Though we are shocked by their deeds, we find no reason why they cannot be reformed over a period of time").

adopted by the Government, it will be necessary to formulate a customized policy initiative for poverty alleviation. Understanding the changes in the institutional structure is a prerequisite of such policy formulation. Mere formulation of a large number of innovative schemes and programmes for the poor may not be adequate; a strong political commitment and a sustainable and healthy development of the State economy are equally important. Vision and sensitization, flexibility and capability to adapt and indigenise, responsiveness, continuity and sustainability are the fundamental key-structures of efficacious governance. The policies formulated need to reflect the same in order to be congruent with the needs of the target group. The responsibility of mitigating poverty cannot be that of the Government alone; it requires the cooperative efforts of the civil society. Optimization of the strategies should be such that the policies function in an atmosphere of both interdependence and independence simultaneously, thus creating a synergy for yielding better functional linkages and collaboration.

Pt. Jawaharlal Nehru had stated that “a society, which does not treat each of its members as equals, forfeits its right of being called a democracy. To bring freedom in a comprehensive sense to the common man, material resources and opportunity for appointment should be made available to secure socio-economic empowerment which would ensure justice and fullness of life to every man and woman.”⁷¹ In conformity with this, The Constitution of India envisions social justice as the arch to ensure life to be meaningful and liveable with human dignity. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian, social, economic and political democracy. In a developing society like ours, law is a catalyst and rubicon to the poor to reach the ladder of social justice.

⁷¹ JAWAHARLAL NEHRU, INDEPENDENCE AND AFTER 28 (1949).

