CHAPTER - VI

Conclusion and Suggestions

The worth of human beings can be measured by the standard of rights and freedoms which he enjoys in the society. It is the earnest duty of human beings to offer respect to the fellow beings and treat them worthy of similar rights and obligations as one enjoys. This yardstick determines the distinction between human beings and animals. The worth of the human beings is the central theme of every religious dictate which emphasis on the humane treatment of not only human beings but also of all living creatures. Though the materialistic and selfish mode of existence led to the eclipse of dignity of the individuals for a shorter span wherein the powerful exploited the poor and weak for their goals, yet the reaffirmation of human dignity was initiated after the holocaust of the world wars. The international comity rose to the occasion and adopted the golden fabric of UN Charter and the Universal Declaration of Human Rights which brought about a shift in the rational thought process and carried out a niche for the re-enforcement of the dignity and the worth of the individual.

Generally every international effort recognizes the inherent dignity of an individual and strikes vehemently at the discriminatory and exploitative techniques. At the national level, concerted efforts were made to engrain the cherished goals of the international promises in the Constitution of the nations; and Indian Constitution is no exception to it. All the golden promises were incorporated in the Fundamental Rights and Directive Principles of State Policy under the Indian Constitution with a target to eliminate the inequalities and discrimination with the constant endeavours in the future.\(^1\)

Human Dignity has inbuilt virtuous values because of its inalienable, universal and indivisible character. Indeed human dignity is achieved, if liberty, equality, justice and unity in diversity are ensured to gleam. This perception of human dignity alone can groom, grill and nourish the individual to excel in his personality and potentialities both\(^2\). The expression human dignity appears to be the species of life and personal liberty. Right

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\(^1\) For detailed discussion, See, Chapters II, III, IV and V

\(^2\) For detailed discussion, See, Introductory Chapter
to human dignity is intertwined with right to exist as human being, not as an animal but as a social animal within the contours of civility. Right to exist does not mean mere survival or animal existence; it would include the right to live with human dignity; a right to minimum subsistence and would include all those aspects of life which makes life meaningful, complete and worth living.3

Dignity does not provide individuals with the means to live with dignity of kings rather, the constitutional obligations is to progressively realize the right to life, health care, privacy, food or housing, etc, to avoid disproportionate or unnecessary incursions into an individual’s dignity, meaning that the government and people should not excessively limit the scope of authority that one has over oneself.

One cannot imagine the human rights without dignity, e.g., the right to life without dignity means the mere right to exist without the meaningful essentials required for life enjoyment. The right to health without dignity means that one can only enjoy it with whatever facilities the State provides and in the way the State provides. The right to work without dignity means the person is bound to work according to the working environment, whether healthy or unhealthy, and nothing beyond that. The right to food in the absence of dignity means that the man is expected to eat whatever is provided; and the right to shelter means every disgraceful and degrading place to live in.

Nevertheless, if one attaches the element of dignity to human rights, it means and includes all the necessities which make the human rights worth realization. Then the right to life would not mean mere existence but much more than that; and includes everything which makes the life worth living as a human being. The right to health would imply affirmative action on the part of the State to provide health-care to everybody in need of it. The right to work would imply healthy working environment4. Henceforth it is meaningless to consider human rights sans human dignity which adds flavour and fervour to the human rights.

3For detailed discussion, See Chapter II
4For detailed discussion, See Chapter II
The term marginalised section generally describes the overt actions and tendencies of human societies whereby those perceived as being without desirability or function are removed or excluded from the prevalent system of protection and integration, and thus limiting their opportunities and means for survival. Marginalisation is defined as the social process of becoming or being made marginal (to relegate or confine to a lower social standing or outer limit or edge, as of social standing). In its most extreme form, marginalisation can exterminate groups. Being marginalised here refers to being separated from the rest of the society, forced to occupy the fringes and edges and not to be at the core of concern. Marginalised people are not considered to be a part of the active life of the society. Marginalisation can be Social Marginalisation, Political Marginalisation, Economic Marginalisation, Age based Marginalisation, Gender based Marginalisation and Health based Marginalisation. In all these marginalisation the human beings are constantly discriminated denying them the active participation in the functioning of the society. Thus these marginalised souls cannot be said to be leading a dignified life as they are forced to lead an unhealthy, isolated, non congenial and frustrated life.

All these types of marginalisation make the life of marginalised section of society hapless. To alleviate the marginalisation stigma, the policy makers, law makers and social contentiousness people of country have to make multifaceted efforts. Thus marginalisation of sections of society means such persons who have been deprived of directly, overtly, covertly by tangible acts which threaten the fullness of the life of such persons or members of community from the main national stream. Such persons are segregated from the privileged strata of the society and are deprived of the right to education, right to social life, right to economy, right to economic stability and right to participation in the political system of the country.

The Preamble of UN Charter affirms faith in the fundamental human rights, in the dignity and worth of the human person. The Preamble of Universal Declaration of Human Rights declares in the similar spirit the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family. It further declares that all human

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5 For detailed discussion, See, Introductory Chapter
beings are born free and equal in dignity and rights. International Covenant on Civil and Political Rights, Optional Protocols to the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on Elimination of All Forms of the Racial Discrimination, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on Elimination of all Forms of Discrimination against Women, Convention on the Rights of Child also emphasize on recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family as it lays the foundation of freedom, justice and peace in the world.

In the similar terms the Indian Constitution has incorporated the International commitments and has adapted itself to the demands of Indian society in preserving the human dignity of the people under the Fundamental Right’s Chapter and the Directive Principles of State Policy. It provides Justice: social, economical and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all; Fraternity assuring the dignity of the individual. It guarantees the equality before law and equal protection of laws but provides special privilege for women, children and Socially and Educationally Backward classes of citizens, Scheduled Castes and Scheduled Tribes; and adopts a policy of reservation in the matter of public employment in favour of backward classes of citizens, Scheduled Castes and Scheduled Tribes both at intake level and promotional level. In order to check the social exploitation of the people it ensures that untouchability and any disability arising out of untouchability is strictly forbidden. For further consolidation of the dignity of the individual the Constitution provides for various rights including the freedom of speech and expression, the freedom to move freely, to reside and settle in any part of India, to practice any profession or carry on any trade and business as well as right to life and personal liberty. It prohibits forced labour and trafficking in human
beings as well as employment of children below the age of 14 years in any factory, mines or hazardous employment. It protects the religious rights of the people as well as the rights of the minorities so that the people should not be exploited in the name of religion or being a minority. It further ensure that the wings of the State will always strive for the realization of the welfare of the people where a justice in all its manifestation is guaranteed and the inequalities are eliminated.

Nevertheless, human dignity includes the “Finer graces of civility and Human civilization.” and as such the right to live with human dignity is recognised as a repository of innumerable human rights, namely, right to healthy environment, right to education of children as State’s duty and parents/ guardians duty vis-a-vis children’s right, Emergency Medical Aid, Right to Health, Privacy, Shelter and Livelihood, etc.

The Social Marginalisation and Human Dignity

Justice in every society is a cherished dream and the human progress has been significantly from the jungle rule to humane rule. The Constitution aimed at a social revolution that would transform the Indian society. Hierarchy and attendant inequality presented an entirely new aspect in India in the shape of the caste system which stifled the creative energies of vast numbers condemned to labour in conditions of degrading exploitation. The exploited are stripped of human dignity and worth. Patriarchy added yet another element of subjection of women and children to this enormously tragic blockage of initiative and innovation. Faced with the daunting task of modernising India against this setting, the Constitution makers set to work with unflinching faith and unbounded hope - faith in the revolutionising principles of liberty, equality and fraternity and in the genius of the Indian people to build a better future for themselves, and hope that the

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14 See, Article 24 of the Constitution of India
15 See, Article 25-28 of the Constitution of India
16 See, Article 29 and 30 of the Constitution of India
17 See, Article 38 of the Constitution of India
promised transformation would be accomplished without violence and within the framework of democracy.

There is a misconception that the problems of Scheduled Castes, Scheduled Tribes and Backward Classes are sectional. In reality these are part of the central and core problems of the country. These three categories of people constitute about $\frac{3}{4}$ of the population of the country and almost the entire physical labour force of the country is drawn from them. It is the failure to tackle their problems so as to remove their disabilities and secure their full potential for national development that lies at the root of the many weaknesses faced by post-Independence India to this day. Therefore, these issues and the remedial measures should be approached as central and core concerns of India.

Yet, one still awaits for a cultural revolution that would uproot inherited attitudes, values, institutions, practices, and postures, replacing them with values and attitudes relevant to a modern egalitarian society. Education has still to perform the role of dissolving the encrusted debris of birth-sanctioned superiority and birth-based discrimination, deprivation and exploitation. The undignified souls still hope for a change in institutional arrangements that would end their abject dependency on the existing power structures in the rural areas. More than half century after the making of the Constitution, the bulk of the scheduled castes families remain agricultural wage labourers as in the past many centuries. The bulk of scheduled tribes continue to remain in remote areas and are being progressively deprived of their lands converting many of them into agricultural labourers. The bulk of the backward classes pertaining to economic categories like traditional artisans, fisher-folks and the like are being deprived of their traditional occupations while being denied access to relevant technology and modern occupations, thereby pushing them into the unorganised labour force. All the three categories continue to be the victims, in varying forms and degrees, of all-round deprivations, discriminations and disabilities, in all spheres – economic, educational and social – in the case of scheduled castes extending to the extreme of untouchability and in the case of scheduled tribes to the extreme of isolation.

The dream of free-India was made a reality with a pledge to adhere to socio-economic justice. The basic structure of the feudal Indian legal system with its dated, diehard methodology, still smacks of fossil features and a colonial-curial culture. Its substantive
and procedural features are conditioned by values of Victorian vintage. Our Constitution, on the other hand, envisions a radiant socio-economic scenario and forward-looking infrastructure, seeking to ensure that its creative mission may functionally fulfill the fundamental rights and egalitarian aspirations of the vast population which is even now governed by an arcane establishment. The revolutionary tryst with destiny that ‘We, the People of India’ made on gaining Independence remains a tragic illusion and an irony of jural magniloquence. Moreover the democracy and welfare concepts warranted to be people-oriented where by the purpose of law and justice was conceived to be the better of mankind. This type of justice was based on social-good theory\(^{19}\) which laid emphasis that observance of law is conducive to social-happiness with determined utilitarian considerations; and with proper stress on fairness, equality and absence of arbitrariness.\(^{20}\) However the idea of social justice was centered around the evolution of social order which could secure suitable rights and advantages for each section of society removing every possible social inequality and unfairness from it; particularity taking care of the vulnerable sections of the society\(^{21}\). So this type of justice disarms the strong and arms the weak so that he can get his natural share away from exploitative practices.

In the words of Gandhiji;

“According to me the economic Constitution of India should be such that no one under it should suffer from want of food and clothing. Everybody should be above to get sufficient work to enable him to make the two ends meet.”\(^{22}\)

Pandit Nehru said;

“Our final aim can only be a classless society with equal economic justice... a society organized on a planned basis for the raising of mankind to higher material and cultural level”.\(^{23}\)


\(^{23}\) See, R.B. Srivastava, *Economic Justice under the Constitution of India*, p.21, 1967
Therefore, keeping in view the degrading condition of the masses, a socialistic pattern was adopted and reflected through the Constitution of India. The socio-economic justice was conceived in the Preamble and delivered in form of Fundamental Rights and Directive Principles \(^{24}\). The rights which were of grave importance and top priority were enshrined in Part III, both from the point of view of individuals as well as State; and the rights which were considered to be of slightly lesser importance, owing to the inability of the government at the very start of their play, were kept in the chapter IV. The Directive principles were made unenforceable in the court of law \(^{25}\), but it was made mandatory that all coming government shall strive to achieve those too at the earliest with the strengthening of its economic position. \(^{26}\)

The legislature was entrusted with the duty to make laws for the realization of that end and the executive, too, was duty bound to act in furtherance thereof; with the people acting as a watch-dog over their activities; and the failure shall be judged by them after every five years at the time of elections. Judiciary had the duty to act as a check and maintain the balance, if any conflicting interest is there. And generally whenever a directive principle was enforced, it conflicted with some fundamental right. The judiciary adopted the course of harmonious construction and instead of imposing Fundamental Rights over Directive Principles or vice-versa; it held that to be of supplementing one \(^{27}\). As has been rightly held in case of *State of Kerala v. N.M. Thomas* \(^{28}\), that Fundamental Rights and Directive Principles should be construed in harmony to each other and every attempt should be made by the court to resolve apparent inconsistency. Directive Principles constitute the stairs to climb the high edifice of a socialistic State and fundamental rights are the means through which one can reach the top of edifice.

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\(^{24}\) See, Granville Austine, *The Indian Constitution, Cornerstone of a Nation*, p. 51, 2000


\(^{26}\) CAD Vol. VII, p.473


\(^{28}\) AIR 1976 SC 490
All those persons who were the dejected lot bearing the inequality, the proper reservation policy was formed from time to time for providing them benefits so that they can be accommodated in the main stream. The persons belonging to backward classes, Schedule Tribe, women, were granted various exemptions and privileges in order to end the exploitation and uplift them. Laws were made to remove such social and economical disparities and to bridge the gap on the scale of development by helping them and to climb the stairs speedily. The concept of equality was not followed in stricto-senso as there was no perfect equality in India. So policy of protective discrimination was followed and this policy was upheld by the courts as non violative of the principle of equality.\textsuperscript{29} But in pursuing this policy, the courts were very keen to declare anything ultra-vires if the classification is not based on intelligible differential.\textsuperscript{30} This was the main reason that in the past when caste was adopted as a single basis for classification, the courts decided otherwise\textsuperscript{31}, but emphasised that it cannot be the sole criterion but one of the criterion, and any classification on it only sounds of unreasonability.\textsuperscript{32}

**The Economic Marginalisation and Human Dignity**

In India the economic disparity amongst the people make them to migrate from the villages to the cities in search of better job opportunities in order to uplift their economic status. However, the dearth of job opportunities and the housing facilities force them to live in the slums and to take on hawking as their profession for their survival. Though these professions are the life line of the city life, but the unregulated hawking is considered to be a menace to the city environment. In the similar strife the slums are considered to be a blot on the picturesque landscape of the city. These hawkers and slum


\textsuperscript{31} See, *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 526

dwellers are often subjected to exploitation by the municipal persons, police and the criminals. Therefore, consorted efforts are required for their proper regulation.

Indeed there are various provisions in the Municipal Acts of the States to regulate hawking and Slum dwelling, but because of the pressure of the human rights groups, the Parliament has passed the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act of 2014 and the Slum Area (Improvement and Clearance) Act, 1956. The Street Vending Act is considered to be a model Act which regulates the Street Vending through the Town Vending Committees. This Act provides for the regulation of Street Vending through easy licensing process, classification of the Street Vendors, classification of the area of Street Vending, renewal of the license as well as the provision for fines and evictions of the unlicensed hawkers. Initially the judicial attitude was against the unregulated street vending and slum dwelling, but keeping in view the plight of the people in the bigger cities, it favoured the right of the people in order to check their exploitation and unreasonable evictions.

Similarly, the Slum Area (Improvement and Clearance) Act provides for the proper regulation of the Slums on the private land so that proper hygienic conditions conducive for slum dwellers can be created. However, the State enjoys the power of Slum clearance and taking over any area in public interest without effective provisions safeguarding the interests of the slum dwellers.

The other undignified professions which are the offshoot of economic disparity are prostitution and begging. Prostitution is not befitting of the contours of civilized society which presents a degradable state of affairs existing in a society wherein the persons are exploited on account of their adverse socio-economic status. It causes a serious threat to the well knitted fabric of society as the body of a person is made vulnerable to the unwarranted sexual impulses of exploiters for gain. From the time immemorial, prostitution has remained engrained in the social fabric of mankind, on account of custom

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33 For detailed discussion, See Chapter IV; See also, Pyrae Lal v. Delhi Municipal Committee, AIR 1968 SC 133.
34 For detailed discussion, See Chapter IV; See also, Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180
35 For detailed discussion, See Chapter IV; See also, “Human Trafficking: How to address the issues” An information brochure issued by the Joint Women’s Programme, India
oriented sanctions and was limited only to the upper classes of society. The involvement of females in the profession of prostitution takes place on account of various reasons i.e. As a mean of survival, On account of stigmatized life, Involvement in religious ceremonies, Unsatisfied sexual urge, Unwelcome environment and Curiosity of sexual experience etc.

These significant causes play pivotal role in attracting the females towards the profession of prostitution which ultimately becomes hereditary feature. The modern trend exhibits that the profession of prostitution is not only limited to females but males are also entering into the profession on account of following reasons i.e. Easy life style, Sexual urges, Paying clientele and Safe sex, etc. Whatever may be the reasons for the existence of prostitution in all societies, this profession cannot be classified as a profession of dignity. In contemporary time, the emphasis on human rights put forth the view point that the dignity of an individual should be safeguarded in all its manifestations as warranted by the International Conventions and National efforts. Furthermore the deplorable state of affairs in relation to prostitutes and their exportation from economically less advanced countries to economically more advanced countries awakened the consciousness of the international community which came forward with a convention. “International Convention for the suppression of the Traffic in Persons and the Exploitation of the Prostitution of others, 1949”, which inter-alia emphasize on the elimination of prostitution. In this regard various International conventions laws were framed regarding trafficking of women and children where some standards have been laid down, which have been agreed upon by almost all countries to reflect them in their respective domestic laws compatible to the international standards.36


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to the Protection of Children with reference to Adoption, 1986; SAARC Convention for the Promotion of Child Welfare, 2002; Convention on Prevention and Combating Trafficking in Women and Children for Prostitution, 2002 are the other Conventions regulating the trafficking in women and children. On the similar lines, Indian Legal framework governing sex workers is entailed in the Constitution of India, 1950; the Indian Penal Code, 1860 and Immoral Traffic (Prevention) Act, 1956. The Constitution apart from the equality provisions and provisions of freedom of association, right to life and personal liberty, guarantees prohibition of trafficking of human beings and forced labour. Under the Directive Principles of State Policy, the State is required to direct its policies towards securing, inter alia, that both men and women have equal right to an adequate means of livelihood, that health and strength of workers is not be abused, and that citizens are not forced by the necessity to enter avocations unsuited for their age and strength, promotion of the interest of the weaker sections of the society, ensuring their protection from social injustice and exploitation, and obligates the State to raise the levels of standard of living with dignity.

In India a specific legislation was passed in the year 1956 known as Suppression of Immoral Trafficking Women and Girls Act, 1956 whose nomenclature was changed to Immoral Traffic (Prevention) Act, 1956. The principle object of the legislation is to arrest the commercialization of the flesh trade.

The Act imposes the criminal liability on the persons associated with the profession of prostitution i.e., prostitutes, pimps, procurers, brothel keepers, touts, etc. It also imposes a criminal liability on the persons who aid or abet prostitution and makes deterrent provisions for introducing the person by force into the profession or force a child to prostitution. It also provides for establishment of correctional homes for the rehabilitation.

37 See, Articles 14, 15 and 16, Constitution of India, 1950.
38 See, Article 19 (1), Constitution of India, 1950
39 See, Article 21, Constitution of India, 1950
40 See, Article 23, Constitution of India, 1950
41 See, Article 39 of the Constitution of India
42 See, Articles 42, 43, 43A of the Constitution of India
43 See, Article 39 of the Constitution of India
44 See, Article 46 of the Constitution of India
45 See, Article 47 of the Constitution of India
The persuasion of the cases pertaining to prostitution pin points that the judiciary does not favour prostitution as is reflects from the cases of *State of Mysore v. Sushella*\(^{46}\), *State v. Premchand Kubchanda*\(^{47}\), *Kamlabai v. Maharashtra*\(^{48}\) as well as has decided the police apathy as it reflected from the cases of *State v. Gayd*\(^{49}\), *Jacob v. State of Kerala*\(^{50}\), *Bai Radha v. State of Gujarat*\(^{51}\) etc.

Begging is not only a social evil but a social crime. The beggars are vulnerable to exploitation. Males, females, children (both boys and girls), females with infants in their arms (infants let out by the goons in this business/commerce), etc., are seen begging in public places. Beggars are victims of situational crisis. Begging in India is associated with the problems of poverty, unemployment, and psychiatric illness, addiction, poor attitude of family members, suicidal tendencies and anti social activities. Begging is the social problem in as much as the existence of large number of beggars means non utilization of this force within the existing resources of the society. Women, children and disabled persons as beggars are ever increasing who beg for livelihood. It seems that the alarming problem lies in the changing societal attitudes towards beggars. Visitors to religious places prefer to offer alms to the beggars in the religious – psychosis/ fear of being rid off evil forces.

The begging traders engage women and children in the begging and it seems an accepted way of life. Thus begging on the whole is a socio- legal economic issue problem. Today as India has been facing inflation problem due to which the vast majority of the people who are below the poverty line can easily become a prey to the profession of begging.

Efforts have been made at national level where different rights are granted that is right to work; free choice of employment, protection against unemployment, providing a standard of living adequate for health and well being of self and his family; right to free education. All these rights are elementary rights and should be granted to every individual of the society. Thus appropriate steps are being undertaken to safeguard such rights. Inspite of

\(^{46}\) AIR 1966 Mys. 194
\(^{47}\) AIR 1964 Bom. 155
\(^{48}\) AIR 1962 SC 1189
\(^{49}\) AIR 1960 Bom. 289
\(^{50}\) AIR 1971 Ker. 166
\(^{51}\) AIR 1967 Guj.211
all such efforts, a particular segment of Indian masses continued to live undignified and uncongenial life owing to inadequate facilities and poverty. Among them the Beggars being one of them, flooding the busy streets engaged in unlawful assignments.  

**Health Based Marginalisation and Human Dignity**

Health remains the prime concern among the human beings and every effort of the human beings is devoted for the maintenance of the proper health and fitness of their body and mind, not only of themselves but of their dependents. However there are certain inherent genetic disorders which make the human beings mentally or physically disabled from the very birth. Certain disabilities are fall out of unhealthy environment, unhealthy eating and drinking habits, work pressure and hazards, accidents, crime, wars and age. The Persons with disability are often exploited and are subjected to degrading treatment resulting to the denial of dignified life. They are subjected to mental and physical torture in their homes, at workplace and in the society. Therefore there is an inherent need to protect the persons with the disability and it is one of the principal duty of the State to protect their rights so that they can live with dignity.

Majority of the disabilities can be catered through raising the nutritional level especially in case of children, women, and sick people or through compensatory jurisprudence, i.e., disabilities arising out of accidents at the workplace. Consorted efforts have been made in this regard with the passage of the Workmen Compensation Act, 1923; the Mental Health Act, 1987; the Rehabilitation Council of India Act, 1992; Persons with Disabilities (Equal opportunities Protection of Rights and Full Participation) Act, 1995; National Trust for Welfare of Persons with Autisms (Cerebral Palsy, Mental Retardation Multiple Disabilities) Act, 1999 and Maintenance of Welfare of Persons and Senior Citizens Act, 2007. The idea behind these Acts is to cater the needs of the disabled persons with special emphasis to promote measures for the care and protection of these persons.

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52 For detailed discussion, See Chapter IV  
53 For detailed discussion, See Chapter V
Suggestions

The study undertaken by the researcher pinpoints the deplorable condition of the marginalised section of the Indian society and on the basis of the above observation submit the following suggestions which, it is believed, will strengthen the rights with dignity and shall provide an effective chance of development to the marginalised section of Indian Society.

All International Charters and Conventions and the national regime can be made effective only if serious pragmatic effort are being made by every section of the society including the State, NGO’s, Human Rights Groups and every individual of India.

Social and Economic Justice

“Social and Economic justice” is integral part of justice in generic sense. Justice is the genius, of which social and economic justices are the species. Social justice is a dynamic device to mitigate the suffering of the poor, weak, tribal’s and deprived section of the society and to elevate them to the level of equality to live a life with dignity. Social and economic justice is not a single idea but is an essential part of complex social change to relieve the poor etc., for handicaps, penury to ward off distress and to make their life livable. In other words the aim of the social and economic justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and Constitutional goal. And proper policy formulation, implementation and goal accomplishment should be clearly unmarked without any other extra considerations.

In line with the analysis of the concept of Socio- Economic Justice the paramount need for the radical redefinition of governance to change the mindset of the political executives and the permanent civil services. The movement must be from governance to good governance. It should be recognized that constitutional rights of the citizenry, human dignity, human rights, human security are not rewards of development but are critical to developments itself. Good governance must necessarily include developmental autonomy for Scheduled Castes, Scheduled Tribes, Backward classes and other deprived categories to shape relevant and appropriate policies and programmes for their development and empowerment and the implementation of those policies.
Scheduled Castes, Scheduled Tribes and Backward Classes

Initially, in order to maintain the working equality in India the reservation benefits were conceived which are to be for a fixed period of 10 years from the day of making of Constitution but its life has constantly been extended. And even after fifty years of Independence, we are not in a position to uplift the under privileged and the prime reasons for the failure is the population explosion in India. The population is constantly on the increase and with the swelling of number; the number of on-looker is also increasing. So this requires serious efforts; and steps should be under taken in this regard.

Secondly, the classification is population based and has its close nexus with the politics. The perpetuity of the reservation issue keeps the ball rolling in the political scenario and is a determinating factor—not only determinating but very effective one. So no political will is there to put on end to it. Henceforth a pragmatic will is necessary for effective regulation of the same.

Thirdly, no doubt, the commissions are there who have to watch the constant progress in this regard but no serious effort has been significant. They must determine precisely in how many cases the benefits are being given and upliftment accomplished and how many more needs it.

Fourthly, there is no limit on the extent of reservation and here also it is unlimited as to number of times and length of time. The courts have emphasized on the identification of creamy layer, but no proper attempt has been made which requires a serious consideration. The State must determine the pocket size which can determine the uplifted sections of the society and such persons must be excluded from the benefit of reservation so that the benefits could peculate to the persons who are actually in need.

In view of the above, the following measures are submitted as humble suggestions:

(a) The apex Court as well as the commission for Constitutional Review should ponder upon devising a more acceptable criterion for identifying backward classes, than the present one base on caste which has in effect perpetuated and legitimized caste-system in a reverse direction. Such legitimization, though undertaken in the name of achieving
“social justice” and “equality”, is not only anachronistic and retrograde but also antithetic to secularism, a basic feature of the Constitution.

(b) The over-expanding list of OBCs points to a basic flaw in the procedure of assessing the rewards of the reservation policy. As advised in Indira Sawhney\textsuperscript{54} and reaffirmed in Jagdish Negi\textsuperscript{55} and Ashok Kumar Thakur\textsuperscript{56}, there should be mandatory periodical-review of the backwardness of various classes receiving preferential treatment as OBCs. Classes which attain certain degree of advancement/adequate representation should be excluded from the beneficiaries of reservation. Reservation, in other words, “should be used as a medicine, not as a food”.

(c) The Court must adopt a consistent approach in exempting certain services/courses from the ambit of reservation. In Indra Sawhney\textsuperscript{57}, the Court “advised” of a number of areas where such exemption was to be made, and the illustrative list included “specialties and super-specialties in medicine/engineering” and “teaching post of Professor and above in any.” Yet in State of U.P v. DinaNath Shukla\textsuperscript{58} the court approved such reservation even for single post of professor in different specialties/disciplines/departments of a university subject to the rule of rotation and roster, after clubbing all such posts together. The reservation in a single-cadre post was declared as unconstitutional recently in Post Graduate Institute of Medical Education & Research Chandigarh v. Faculty Association\textsuperscript{59}, but the Court refused to make any comment whether its ratio would also apply to the post of professor. It has thus not invoked the exemption rule and illustrative list of Indra Sawhney for exempting professors from the ambit of reservation. But surprisingly in Preeti Srivastava v. State of Madhya Pradesh\textsuperscript{60} recently, the apex Court has invalidated any reservation in “super-specialties in medicine” declaring that “any dilution of merit at this level would adversely affect the national goal of professional training”. Thus one decision negates the aforesaid “Illustrative list” whereas the other decision applies the same. Such inconsistency needs to be corrected at the earliest.

\textsuperscript{54} See, Indra Sawhney v. Union of India, AIR 1993 SC 477
\textsuperscript{56} See, Ashok Kumar Thakur v. Union of India, AIR 2008 SC 1
\textsuperscript{57} Ibid.
\textsuperscript{58} See, State of U.P. v. Dina Nath Shukla, AIR 1997SC 1095
\textsuperscript{59} AIR 1998 SC 1767
\textsuperscript{60} AIR 1999 SC 2894
(d) Furthermore, it is submitted that any sub-classification among OBCs is also required to satisfy the test of “reasonableness” contained under Art 14.

(e) Reservation for SCs and STs should be brought under the purview of a statute covering all aspects of reservation. Special Tribunals need to be constituted for dealing with the cases of reservation on the lines of Central Administrative Tribunals.

(f) It should be mandatorily stipulated in the Memoranda of Understanding (M.O.U.s.) of privatization or dis-investment of public sector undertakings that the policy of reservation in favour of SCs, STs and BCs shall be continued even after privatization or dis-investment in the same form as it exists in the Government and this should also be incorporated in the respective statute of reservation.

(g) Moreover, the directives in the Part IV were incorporated with a view that they would be realised within a time-frame but still their unrealisation requires that they should be shifted on to Part-III as the judiciary is trying to bring within the fold of Fundamental Rights especially Article 21 which has been subjected to extra-ordinary expansion in the past.

(h) The people in the power should remember that they are governing their brothers, and not enemies; and should not float at norms and subject the follow-beings to the exploitative practices like were done in the past. The present trend and under currents signify that either the ideals conceived were wrong or the followers went wrong, getting off the track, on the way to realization of those ideals. There is an urgent need for a watch committee consisting of citizens and the persons from various organs of state which can watch the performance of the government and pinpoint the non-performance, and non-implementation of various socio-economic measures. There must be committee who can chalk out the areas which need the urgent attention and need should be paid to its demand. As a committed will and effort is required because Indian scene only lacks it.

**Hawkers and Slum Dwellers**

The hawking and Slum Dwelling are generally interrelated which emanates out of economic marginalisation. Though the laws are there to regulate slum dwelling but these
laws impose a burden on the person who have shifted to urban areas from rural areas in search of jobs. Therefore it warrants that the necessary job oriented programmes or industries should be shifted to the vicinity of the rural areas so that the people should stop migrating to urban areas. If it is not feasible, then the State is duty bound to provide the housing facilities to the migratory population which can ensure a life of dignity for them. Similar suggestion will hold good for the regulation of hawking. The State cannot shifts its liability on to the private players and imposes an economic burden on them. Even if the private players are incapacitated in providing hygienic conditions of living, the State should come to the rescue of such private players with economic support. Therefore, a comprehensive planning is required for the economic restructuring in the development of the rural areas. Though the State has come out with schemes like MGREGA, but it provides only employment for hundred days which is not sufficient for the enjoyment of the facilities of dignified life.

**Prostitution**

Since it is very difficult to put an end to the institution of prostitution on account of social and administrative patronages, therefore, the purpose of law has exhibited a shift from elimination to restrictive; and punitive to reformatory. Moreover, this significant shift was also desired on account of protests and demands in recognition of the rights of the prostitutes and their children. Even the countries have adopted the procedure of licensing of prostitutes because it helps them in keeping an effective check on the increase in number of the prostitutes.

The Apex Court in India has also echoed its concern for the rehabilitation of the prostitutes and their wards in *Dr. Upendra Baxi v. U.P.*[^61] and *Gaurav Jain v. Union of India*[^62]. The lenient approach adopted by legislature, administrative and judicial authorities is also on account of the emergence of HIV/AIDS epidemic, so that prostitutes do not go underground and effectuate the indiscriminate spread of the disease.

[^61]: AIR 1987 SC 191
[^62]: AIR 1997 SC 3021
Women in distress require individualization of suitable treatment. Such treatment cannot be provided in jails henceforth, reliance should be placed on the creation of the protective homes for correction, rehabilitation, physical and mental development and prevention from moral dangers. A differential treatment should be provided to the prostitutes who have entered the profession on account of socio-economic compulsions and those who have adopted it out of their own volition. The protected homes must have the efficient staff and sufficient infrastructure and funds for the reorientation of the prostitutes. In this regard the help of sociologist, psychologists, law experts, NGO’s should be taken.

The fallen men and women too are part of citizenry. In the past the prostitute was never seen as a complete human being with dignity of person, as if they had no needs and aspiration of their own, individually and collectively. In recent times however some change is visible in public opinion. Certain enlightened sections of society are advocating that the fallen men and women should not be treated as a criminal or as an object of shocking sexual abuse. They are victims of circumstances and hence deserve to be treated as human beings like others so as to being them into the mainstream of the social order without any attached stigma. Just as an accused does not forfeit all of his human rights because of his involvement in an offence, a fallen men and women too does not forfeit their rights to human dignity because of their occupation.

Looked from the angle of human rights, provisions for ensuring minimum facilities of health-care of the women and their children should be incorporated and should be acted upon both in the interests of the fallen person and the society at large.

Denial of access to shelter and housing, ration cards, voting rights should be considered as a serious infringement of their rights. In the absence of a just, fair and unreasonable cause, discrimination against them in these matters would be violative of fundamental freedoms and right to human dignity. Therefore, necessary safeguards should be provided in this regard.

Immoral trafficking in persons is a problem which is deeply rooted in the socio-cultural locations. Therefore, any attempt to tackle it through the instrumentality of law would not be sufficient. One of the major problems in the prevention and rehabilitation of such
women is of social acceptability. Therefore, it requires a multi sectoral alliance, like women activist groups, NGOs and other agencies which can take care of their shelter, educational and vocational training, some remunerative engagements and overall personality development. This necessitates exploration of various other agencies besides the States instruments of prevention, reformation and rehabilitation.

Self employments through provisions of education, vocational training, financial support, developed marketing facilities may be some of the major avenues in this regard. Marriage is another object to give them real status in society, but these should be solemnized only after proper scrutiny and verification of the antecedent of the bridegrooms and of the organization facilitating such marriages. All possible care should be taken to ensure that the unfortunate fallen women are not again forced into the flesh trade through the play of forged and mock marriages. In appropriate cases all feasible measures are taken to trace the parents/ family members of the prostitutes and restore them to their families as acceptance by the family is the important input to rekindle the faith of self respect and self confidence.

Holistic approach addressing the contributing factors of prostitution should be adopted. Timely investigation of reported missing cases and keeping a constant vigil on incoming and outing person and girls are required and establishment of ‘Helpline’ and counselling centers may also be helpful in the prevention of coerced initiation of helpless and hapless persons into prostitution. Particular attention should be given to rescue of the victims and their restoration with their family. Efforts are needed to promote awareness in the public at large including children, through information by appropriate means, education and training about the preventive measures and harmful effects of these offences.

Vocational training in weaving, knitting, painting, soap production, etc., may be provided. The central and state governments should start appropriate employment generation schemes. It has been suggested by some feminists that licensing and monitoring may not help sex workers to live and work with dignity. They feel that regulation leads to a division between legal and illegal sex workers, leading to further marginalisation of the latter. Many sex workers would not desire regulation as it may mean they will be publicly seen as prostitutes and an increase in control over the lives of
the prostitutes would be demeaning to them and also the aspect of compulsory medical testing. Many feel that legalizing prostitution is akin to legalizing child labour and tantamount to slavery. Some suggest that the social stigma regarding prostitution will fade away after legalization or decriminalization, yet the shame of those in prostitution remains after legalization or decriminalization. If brothels are to be legalized, the employees should be protected like any other workers under the appropriate provincial labor standards legislation. Regulation going beyond this minimum is likely to contribute to the continued stigmatization of prostitutes and to the institutionalization of yet another working ghetto for women.

According to G. Janice Raymond, there are ten reasons for not legalizing prostitution. These are: Legalization of the prostitution is a gift to pimps, traffickers and sex industry because it will give legitimacy to the consumers of sex who would buy sex and would not be beneficial to the sex workers herself. Legalization will dignify only the industry but not the sex workers.

Legalization of prostitution and the sex industry promotes sex trafficking as there would be no method to ensure that immigrant sex-workers from other countries would voluntarily consent to their being a part of sex industry. There is no definite mean to identify coercion or forced sex work. Legalisation of prostitution does not control the sex industry. It expands it. Prostitution as an industry would flourish with private entrants coming into business. This would in turn increase the atrocities against which sex work was legalized in the first place. It could open doors for other forms of sexual exploitation such as phone sex, table top dancing, peep shows, pornography, beer bars and so on. Legalization of prostitution increases clandestine, illegal and street prostitution because many sex workers would not be eligible to register with the local authorities. Some could

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63 See, Geetanjali Gangoli, “Prostitution, Legalisation and Decriminalisation: Recent Debates”, Economic and Political Weekly, 1998
67 Ibid.
be minors, some could be illegal migrants, and some could have diseases such as HIV or other venereal diseases which would lead them to stay away from legalization. Many sex workers would therefore move underground and in turn contribute to illegal sex work and street prostitution. There are many dangers of working on the street which include rape, police abuse, and substances abuse also known as occupational hazards.\

Legalization of prostitution increases child prostitution as research shows that after sex work was legalized in Netherland and Victoria, Australia, child prostitution has grown exorbitantly and this will lead to various forms of commercial sexual exploitation of children. Legalization of prostitution does not protect the women in prostitution as there would be no safeguard against abuse during the sexual contact. Legalization would instead benefit the client rather than the sex worker herself. Legalization of prostitution increases the demand for prostitution. It encourages men to buy women for sex in a wider and permissible range of socially acceptable settings. When such legal barriers, the men forget their social and ethical barriers and view women as just sexual merchandise and this will lead to commoditization of women. Legalization of prostitution does not promote women’s health as it is necessary that the clients also need to be monitored for Sexually Transmitted Diseases such as HIV/ AIDS. With such mandatory health checkups in place only for the sex workers, there is no guarantee that they will be safe from contracting any disease during their work. The enforcement of a condom policy has also failed as it is left to the sex workers herself to decide whether she wants to practice safe sex or not. Legalization of prostitution does not enhance women’s choice in terms of wages earned for their sex work. Most women do not make a rational choice of sex work to be their profession. Many are victims of trafficking and illegal pathways and land up in prostitution beyond their will. So, legalization would in turn deny them their freedom. Women in systems of prostitution do not want the sex industry legalized as this would increase the risks and humiliation that is faced by sex workers. They are definite that this

69 See, Ilse Pauw and Loren Bemer, “Naming the Dangers of Working on the street”, 36 Agenda, pp. 80-83, 1997
70 Ibid.
would increase violence against them and they do not consider this to be their rightful profession as it destroys their life and health.

**Begging**

It seems that efforts are made to control this menace at every level, yet the number of beggars is continually swelling. It is unfortunate that our government does not appreciate the most popular saying, “A stitch in time saves nine”. It is known that beggary is a multi-factorial problem and therefore all the factors involved must be thoroughly understood for a tangible solution, provided the government takes the needed interest. Some of the likely factors involved in beggary include poverty, unemployment, inflation, mafia and lack of implementation of proper legislation.\(^71\) Therefore proper care must be taken by the State as well as by the private players so that persons should not adopt beggary as the profession on account of these factors. Time, Financial support system can take care of poverty, unemployment issues. Proper implementation of the legal framework would stop the increase in the number of beggars and the control of begging by the criminals. Proper receptive and rehabilitative homes should be created for sick persons, women and children. These homes should be effectively regulated and financially supported. Effective measures taught to the beggars so that they can earn their livelihood and lead a dignified life.

**Disability**

The Persons with disability requires a complete concern so that the dignity of these persons can be maintained. As these persons are disabled not only physically but also mentally and emotionally. It therefore imposes a principal duty on the State to protect the rights so that they can live with dignity. In this regard different legislations/ Acts were passed in order to protect these disabled persons and special emphasis has been laid down for the care and protection of these persons. The Acts not only take cares of the economic necessities of the citizens and but also make provisions for the emotional and physical needs of the persons. The idea of the enactments is principally in according protection

\(^71\) For detailed discussion, See, Chapter IV.
and disabled maintenance to the class but they require more than that. Just protection and
maintenance cannot arm them with the necessities required for leading a normal life. Since there are special enactments, therefore it should have been more comprehensive in
nature. In case of age based marginalisation, the obligation is imposed on chances of
succession which may or may not happen in reality. If one extends the theory of chance
succession, the government can also be included within the purview of the provisions as
it can also acquire the property by escheat. It will not cover those cases where they are
paying a paltry sum for the maintenance to the senior citizen which is an unrealistic
approach because the sum has to be a life sustaining amount. Therefore insufficiency of
maintenance should be incorporated as a ground for the claim of maintenance depending
rationally on the earning of the person made to pay the maintenance. The Act
incorporates punitive provisions for the enforcement of the orders of the tribunal
concerning maintenance which are expected to inculcate a habit in the younger
generation to maintain the elder ones. The senior citizen can claim maintenance either
under the Criminal Procedure code or under this legislation. Furthermore, if the children
or relatives have gone abroad which generally is the case in contemporary era, there can
be complications in the compliance of the process as well as the order of maintenance. In
such cases, there must be some interim measures which can be adopted to take care of the
senior citizens pending enforcement.

The realistic approach should have been to accommodate any senior citizen in the oldage
homes who desires to live in there so that they could lead the normal life in the company
of fellow persons. This can be a life supportive exercise for the senior citizens as they
can share their feelings with others and enjoys the facilities in the oldage homes as
provided in the enactment which otherwise would be difficult for them to avail.

The Act should make provisions for the creation of the recreational halls and special flats
for the adjustment of senior citizens which can take care of majority of their problems.
This facility will take care of the emotional and physical needs of the elders sparing them
of the in dignified survival and the ever haunting seclusion. Special psychological clinics/

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72 For detailed discussion, See, Chapter V.
neurotic centers should be opened which can perform a positive role in broken families and unite the elders with the younger. The person with disabilities got their share in 1995, when the legislation dealing with their rights was passed. Though the legislation is unique yet, it requires a serious implementation. Majority of the States have not appointed commission for persons with disability, therefore, a serious address should be made on that account. The legislation aims at the discrimination on the basis of disability in matters of public employment and public facilities whose size is shrinking with the adoption of capitalistic policy in India. Therefore the private players should also be brought within the purview of the provisions of the Act which will strengthen the disability movement.

Indeed the Indian judiciary has been conscious of the plight of the marginalised section of the society and has evolved the concept of Public Interest Litigation to redress their grievances. Public Interest Litigation in India is perhaps the most striking innovation in the recent past in the delivery of legal services. It has emerged as a part of the legal aid movement directed towards the protection of downtrodden masses of the country. Public Interest Litigation offered new challenges and opportunities to advocates to serve society better by imparting legal services to a much wider section of the people who deserved them most. Thus the dignified life was ensure by the judiciary in the case of Gaurav Jain v. Union of India73, Vishakha v. State of Rajasthan74, Bandhua Mukti Morcha v. Union of India75, Sanjit Roy v. State of Rajasthan76, Upendra Baxi v. State of Uttar Pradesh77 etc. Similar vibrant approach is expected from the other conscious functionaries of Indian society including the press.

In addition to this the Indian judiciary has evolved the concept of “Compensatory jurisprudence” to safeguard the interest of marginalised section of the society. The same concern can be deciphered from the decision of Daily Domestic Working Women’s

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73 AIR 1990 SC 290.
74 AIR 1997 SC 3011.
75 AIR 1984 SC 802.
76 AIR 1983 SC 328.
77 AIR 1987 SC 191.
Forum v. Union of India\textsuperscript{78}, Railway Board v. Chandrima Das\textsuperscript{79}, Shella Barse v. State of Maharashtra\textsuperscript{80}, People’s Union Democratic Rights v. Union of India\textsuperscript{81}, Santbir v. State of Bihar\textsuperscript{82}.

In the backdrop of the above delineation, it is submitted that the legislative initiatives in India promote equality of persons with disabilities by ensuring them basic social, economic and cultural rights to live a life with dignity and by taking various affirmative action and special measures such as care, cure, rehabilitation and resocialisation to achieve real equality. How far the legislative measures are sufficient for the corresponding improvements in the lives of the persons with disabilities needs in-depth heuristic investigations and analysis.

\textsuperscript{78} (1995) 1 SCC 14.
\textsuperscript{79} AIR 2000 SC 988
\textsuperscript{80} AIR 1983 SC 378.
\textsuperscript{81} AIR 1982 SC 1473.
\textsuperscript{82} AIR 1982 SC 1470.