INTRODUCTION

“All Human beings are born free but are in chains.”¹

This statement signifies the worth of a human being and relates an individual to more or less an animal. The freedom to exist and exist independently in an uncontrolled way is a natural attribute of human existence. However the natural way of existence is controlled by the powerful elitist class of the society making the fellow individual exists in an unworthy way. These distinct categories i.e. the powerful and the subjects have existed since time immemorial and there has been a constant friction between these two sections of the society; one constantly tries to overpower the other whereas the lesser powerful always struggle to claim equality and recognition. From this struggle the concept of human rights has emerged, which principally has been trigged off from the concept of human dignity. As the fight is not for the recognition of rights of the person but for the dignity of the person and the rights jurisprudence ensures and safeguard the same.

Human Dignity

The expression “human dignity” has different meanings ranging from a sense of one’s own importance and value to demand to be treated with respect that one thinks that one deserves².

According to Black’s Law Dictionary, “Dignity means the state of being noble, the state of being dignified³”.

Though the expression human dignity defies any precise definition, yet the concept of human dignity plays an important and significant role in the overall development of a person as well as universality of human rights which is invioable⁴. The concept of human dignity as enjoined in the definition of “dignity” in the Oxford English Dictionary, which

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¹ See Jean Jacques Rousseau, The Social Contract, French political philosopher, p.1712
² See, Macmillan English Dictionary, p. 385, 2002; See also, A.S Hornby, Oxford Learner’s Dictionary, 1942; Michael Ashby, Phonetics Editor, 1948.
goes back to the early thirteen century, is “The quality of being worthy or honourable; worthiness, worth, nobleness, excellence.” It includes in this sense, “Honourable or high estate, position or estimation; honour; degree of estimation, rank;” “Persons of high estate or rank; “An honourable office, rank, or title; a high official or titular position;” “A Person holding a high office or position; a dignitary;” and “Nobility or befitting elevation of manner or style”. It discerns that dignity indicates worth that demands respect. The term dignity is derived from the twelfth century French expression “dignite” or “dignete”. These expressions had their roots in the Latin dignus, which Lewis and Short define as “worth, worthiness, merit, and desert”. Dignitas was often used in conjunction with notions such as amplitude- literally, width, size, amplitude; and “dignity, grandeur, distinction, consequences”; and honestas, honourableness, reputation, integrity. In the backdrop of the above, dignity has been widely conceived as an attribute of all human beings.

Man is born free and rational by nature. It is the ratio (mind, reason) through which man excels in his latent potentialities. What is essential for the observance and the promotion of human dignity has been derived from the faculty to develop perceptions, to formulate visions, to enforce it, to plan, to think, to select, to decide, to urge, to steer to human action, to repress the irrational effects according to the rule of nature and reasons. This perception is unequivocal because of the prerequisites of dignity, which is the most important characteristic of human persons. “Dignity is some one’s virtuous authority which makes him worthy to be honoured with regard and respect5. Human dignity in this perspective has international as well as constitutional values which in turn helps the emergence of international and constitutional culture6.

It is therefore concluded that the concept of Human Dignity is as much as important for the marginalised or disadvantaged or neglected sections of the society as it is for the non-marginalised sections.

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Human Dignity: An International Perspective

In modern times, the thrust has been on the recognition of human beings as human beings. This shift has been acknowledged world over after the world condemned the holocausts of the world wars when human beings were killed as mere pigmies. It was realised that the mutual co-existence is utmost necessary for the survival of human civilisation. This mutual co-existence can only be realised if the basic units viz. the human beings are protected and recognised as worthy elements and cohesive force.

Henceforth, the UN Charter and Universal Declaration of Human Rights were adopted with necessarily emphasis on the protection of human rights but with human dignity. A cursory look at the preamble of the entire international document concerning human rights will unveil the basic recognition of dignity and worth of human being\(^\text{7}\). Here dignity is considered to be inherent in all the members of human family\(^\text{8}\). Even the International Covenant on Civil and Political rights, Optional Protocol to the International Covenant on Civil and Political Rights also aims at recognising the concept of human dignity\(^\text{9}\). Further, there are several other International documents which further recognize the inherent dignity and value of the equal and inalienable rights of all the members of human family which is said to be the foundation of freedom, justice and peace in the world\(^\text{10}\). There are certain other declarations and programmes of action which again imposes a collective responsibility to uphold the principle of human dignity, equality and equity at the global end\(^\text{11}\).

It undoubtedly seems that Human dignity is essentially imperative for the progressive development of the Human Rights of Human beings in general and Marginalised or Disadvantaged or Underprivileged or Deprived Sections of the society in particular.

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\(^{\text{7}}\) See, Preamble of UN Charter, 1945.
\(^{\text{8}}\) See, Preamble of Universal Declaration of Human Rights, 1948.
Thus, the Human dignity is the key concern of most of the modern Constitutions of the globe. Human dignity of the individual indeed is the magnum opus of the Supreme Lex of India. Human right to Human dignity in terms of the Supreme Lex of India is immutable and entrenched as inalienable fundamental freedom or basic right, impregnated in the constitutional language of India and furthered by Supreme Court of India. The Constitution of India is influenced by the avowed faith engrained in the Charter of the United Nations, and the Universal Declaration of Human Rights.

The dignity of man is inviolable; and to respect and protect the dignity of the man has been the duty of all authorities created under the constitutional scheme of India.

International documents and Constitutions, the world over, emphasise that the State will assure the dignity of the individual. The international and national perceptions in this perspective seek to achieve this objective by guaranteeing equal rights to every individual, so that he can enforce his minimal rights, if intruded by maximal authority of the State, in a court of law.\textsuperscript{12}

The Constitution of India ordains in the vocabulary of the Preamble guaranteeing to every person; Justice, Social, Economic and Political; Equality of Status and opportunity; Liberty of Thought, Expression, Conscience, Belief, Faith, and Worship and to promote Fraternity Assuring the Dignity of the Individual.

In the background of the above, it has been argued scholastically that above goals cannot be achieved unless and until the dignity of each of its citizens is sustained, maintained, retained, conserved, adopted, and promoted.

\textbf{Human Dignity under Indian Constitution}

The expression Human Dignity, as stated above, does not have any definite meaning. This may be due to the fact that the concept is based on the essence of individual personality which is impregnated by philosophical, theological, and ideological and natural law traditions. Therefore, it is bit difficult to encapsulate the meaning of the

\textsuperscript{12} Supra note 6
concept of Human dignity in one sense. It has, as such a variety of expressions that unfold the right to be treated with honour and respect within the axiom “Right to Life and Personal liberty”. Human Dignity embraces within its domain all the contours of right to be humane. 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\(^{13}\). This perception of Human dignity alone can groom, grill and nourish the individual to excel in his personality and potentialities both\(^{14}\). The expression human dignity appears to be the species of life and personal liberty\(^{15}\) which shall include the right to live with Human Dignity; thus, encompassing all those aspects of human life that go on to make a man’s life meaningful, complete and worth living with dignity that is declared to be an integral ingredient of right to live\(^{16}\).

Nevertheless, human dignity includes the “Finer graces of civility and Human civilization\(^ {17}\)” and as such the right to live with Human Dignity is recognised as a repository of innumerable Human rights\(^ {18}\), namely, Right to Healthy environment\(^ {19}\), right to education of children up to 14 years of age as State’s duty and parents/ guardians duty vis-a-vis children’s right\(^ {20}\), Emergency Medical Aid\(^ {21}\), Right to Health\(^ {22}\), Privacy\(^ {23}\), Shelter\(^ {24}\), Livelihood\(^ {25}\), Timely Medical Aid, treatment, involvement of hospitals\(^ {26}\), Right not to be driven out of the state\(^ {27}\), Right to fair trial\(^ {28}\), etc.

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13 Supra note 4
14 See, J. Krishnamurthy, The Kingdom of Happiness, Oxford, p. 120, 1926.
17 See, Indra Sawhney v. Union of India, AIR 1993 SC 477; See also, TMA Pai Educational Foundation v. State of Karnataka, AIR 1995 SC 138; Ashok Kumar Thakur v. Union of India, AIR 2008 SC 1
18 See, Francis Coralie Mullin v. Administration, Union Territory, Delhi, AIR 1978 SC 597.
19 See, M. C. Mehta v. Union of India, AIR 1987 SC 1086.
23 See, People Union of Civil Liberties v. Union of India, AIR 1997 SC 568.
24 See, UP Avas Awam Vikas Parishad v. Friend’s Housing Cooperating Societies Ltd, AIR 1996 SC 1
In the backdrop of this dignity of man appears to require the attribution of the rights to
the individual which enable him/her to defend his/ her own designs of life in as much as
human dignity is a “Right of Rights.” So far the conceptual analysis of the human dignity
is profiteering to the marginalised or underprivileged or disadvantaged or deprived
sections of the society and have the genesis of “Making the law work for everyone”
encouraging the Marginalised community to accelerate the progress in the developmental
policies.29 Besides, the felt necessities of the world recognize that there is a need for
“Legal Empowerment of the have-nots ”- that is the Marginalised or deprived or
underprivileged or disadvantaged people, as they are also called to be addressed or
known or designated in the development policy goals. It has been argued that by
expanding and deepening universal legal protection, to the
marginalised/poor/disadvantaged/underprivileged and deprived hapless persons will be
helpful so as to make them live with dignity free from poverty, social stigmatization and
political, physical, psychological incarceration.

However, the sources of legal exclusion are numerous and very often country specific
and as such the common threads called are as follows:

**Economic Reasons:**

**First,** legal empowerment is impossible when marginalised people are denied access to a
well functioning justice system.

**Second,** Most of the world’s marginalised people lack effective property rights and the
intrinsic economic power of their property remains untapped.

**Third,** marginalised section, in particular women and children, suffer unsafe working
conditions because their employers often operate outside the formal legal system.

**Fourth,** marginalised sections are denied equitable economic opportunities for their
development. They cannot easily access credit, investment or global and local markets.

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29 See, The Commission on Legal Empowerment of the Poor and United Nations Development Programme,
Making the Law work for Everyone, 2008
**Fifth**, poor marginalised class in India is outside the privileged of the labour laws, because the labour laws in India take care of 7% of the organized labourers.

**Sixth**, the contractual labourers are the worst form of the bonded labour; and they continue to suffer the pangs of hire and fire as an offshoot of laissez-faire age, which has the least relevance in the social welfare state. Besides this, there seems to be a regressive shift from social welfare to laissez faire in the free economic market in the context of liberalization and globalization.

The objectives outlined above, however, state that poor or marginalised or disadvantaged or underprivileged or deprived cannot be realized unless there is collaboration between the developed, developing and the least developed countries. To comprehend the fortune or fate of hapless victims of disadvantaged or marginalised poor segment of the society in 21st century, there seems every possibility to make economic opportunities broadly available for uplifting the marginalised segments of the society in order to bring them in the mainstream of free economic market in liberalization and globalization scenario. Be that as it may, it is acknowledged that the number of people that live in extreme income poverty, no matter how hard they work, and the main reason for this is not far to seek; lack of income is just one dimension of poverty, which culminates into marginalisation of such persons in the society30.

The Scholars, too argue, that four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law. Whether living below or slightly above the poverty line, these men, women, and children lack the protections and rights afforded by the law. They may be citizens of the country in which they live, but their resources, modest at best can neither be properly protected nor leveraged. Thus, it is not the absence of assets or lack of work that holds them back, but the fact that the assets and work are insecure, unprotected, and far less productive that they might be.

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30 The ILO *Key Indicators of the Labour Market* estimated that more than 70% of the workforce in the developing countries operates in the informal economy, 2002
Political & other Reasons

There are other reasons, causes and effects that further vulnerability of marginalisation of Indigenous communities including deprivation of political voices; and as such their human rights are violated resulting in the loss or deprivation of human dignity. In addition to exclusion based on their poverty and their gender, poor women may also be denied the right to inherent property. Vulnerability must be understood as created by the society itself. The scholars believe that vulnerability of deprived groups of the societies that poverty is man-made, by the action and inactions and a failure of public policies and of market.

In many countries, the research studies unfold that the laws, institutions, and policies governing economic, social and political affairs deny to a large part of society the chance to participate on equal terms. The rules of the game are unfair. This is morally unacceptable as it stunts economic development and can readily undermine stability and security. The outcome of the governance, that is, the cumulative effect of policies and institutions of the people’s lives, will only change the processes of governance. Though the same protections and instruments exist in many developing countries, the overwhelming marginalised majority has no way to access them. Notwithstanding this reality, the legal underpinnings of entrepreneurship, employment and market interaction are often taken for granted by the traditional approaches to development and standard economic theory.

However vulnerable/marginalised unprivileged people donot live under the shelter of the laws but far from the laws protection and opportunities it affords. Informal local norms and institutions govern their lives, and where they are not excluded from the legal system, they are often oppressed by it. Because the poor lack recognized rights, they are vulnerable to abuse by authorities that discriminate, seek bribes and take the side of powerful interests who may wish to prevent the poor from competing economics or seek to evict them from their land. Such discrimination has massive consequences. The world statistics find that at least four billion people are excluded from the rule of law.
In the background of the above delineation, it is imperative to have an encapsulation of the expression marginalised or underprivileged or disadvantageous or deprived section of society critically and analytically. These expressions have not been explained either in the constitutional language or statutory language.

**Marginalisation:**

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. Thus marginalisation has aspects in sociological, economic and political debates.

The term marginalisation was defined by different sociologist and different interpretations are given by them. Some sociologists have coined different terms for marginalization:

*Sir Francis Galton* defined marginalisation as eugenics which is a set of science-based idea that advocated for the marginalisation of the people deemed inferior by the criteria of their race alone. With the development of time, *Galton* has improved this definition where he included the specific varieties of positive eugenics and negative eugenics; and the principle defined by *Galton* was directly in connection with the teachings and work of *Darwin*.

*Darwin* defined it as a mechanism of natural selection as thwarted by human civilization. Thus the main objective of civilization is somehow to help the underprivileged ones, in opposition to the natural selection responsible for the extinction of the weakest.

*Herbert Spencer* referred the term as Social Darwinism; and explains that it is a descriptive term which is given to a kind of social theory that draws an association

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between Darwin’s theory of evolution by natural selection and sociological relation to humanity.

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 centre of things. Marginalised people are not considered to be a part of the active life of the society.

Material deprivation is the most common result of marginalisation when looking at how unfairly material resources (such as food and shelter) are dispersed in society. Along with material deprivation, marginalised individuals are also excluded from services, programs, and policies. Ensuing poverty, psycho emotional damage, and its resulting effects often result in catastrophic damage to live, health, and psyche.

Marginalisation can be understood within three levels: individuals, community, and global- structural/ policies. Marginalisation at the individual level results in an individual’s exclusion from meaningful participation in society. An example of marginalisation at the individual level is the exclusion from the welfare system. The welfare system is based on the concept of the universal worker; entitlement to welfare is based on one’s contribution to society in the form of employment. As a result, individuals continue to suffer from material deprivation, as well as their significant role in the socialization of their children.

Another example of individual marginalisation is the exclusion of individuals with disabilities from the labour force. An employer’s viewpoint in hiring Individuals living

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34 Ibid.
with disabilities is that it jeopardises productivity, increases the rate of absenteeism, and creates more accidents in the workplace. Furthermore, it puts forth employer’s concern for the excessive high cost in accommodating people with disabilities.

The marginalisation of individuals with disabilities is prevalent today despite the legislation intended to prevent it, and despite the academic achievements, skills and training of disabled people. Many communities experience marginalisation, with particular focus on Aboriginal communities and women. Marginalisation of aboriginal communities is a product of colonisation. As a result of colonialism, Aboriginal communities lost their land, were forced into destitute areas, lost their sources of income, and were excluded from the labour market. Additionally, Aboriginal communities lost their culture and values through forced assimilation and lost their rights in society.

Today various communities continue to be marginalised from society due to the development of practices, policies and programs that “met the needs of white people and not the needs of marginalised groups themselves.”

Another example of marginalisation at the community level is the marginalisation of women. Moosa Mitha discusses the feminist movement as a direct reaction to the marginalisation of women in society. Women are excluded from the labour force and their work in the home was not valued. Feminists argue that men and women should equally participate in the labour force, the public and private sector, and in the home. They also focus on labour laws to increase access to employment, as well as recognize child-rearing as a valuable form of labour. Today women are still marginalised from executive positions and continue to earn less than men in upper management positions.

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39 Ibid.
40 Ibid.
42 Ibid.
Globalization (global-capitalism), immigration, social welfare and policy are broader social structures that have the potential to contribute negatively to one’s access to resources and services, resulting in marginalisation of individuals and groups. Globalization impacts the lives of individuals and groups in many capacities with the influx of capitalism, information technology, company outsourcing / job insecurity, and the widening gap between the rich and the poor. Alphonse, George & Moffat discuss how globalization sets forth a decrease in the role of the State with an increase in support from various “corporate sectors resulting in gross inequalities, injustices and marginalisation of various vulnerable groups”.

Companies are outsourcing, jobs are lost, the cost of living continues to rise, and land is being expropriated by large companies. Material goods are made in large abundances and sold at cheaper costs, while in India for example, the poverty line is lowered in order to mask the number of individuals who are actually living in poverty as a result of globalization. Globalization and structural forces aggravate poverty and continue to push individuals to the margins of society, while governments and large corporations have failed to address the issues. Insecurity and fear of an unknown future and instability can result in displacement, exclusion, and forced assimilation into the dominant group as a consequential of globalization, it further pushes them to the margins of society or enlists new members to the outskirts because of global-capitalism and dominant discourses.

With the prevailing notion of globalization, one witnesses the rise of immigration a new kind of marginalisation, as the world gets smaller and smaller with millions of individuals relocating each year. This is not without hardship and struggle that a newcomer was going to enter a new life with new opportunities.

Even the newcomers are constantly bombarded with the inability to access the country’s resources because of the reason that they are treated as “undeserving foreigners”.

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45 Supra note 43
47 Ibid.
newcomers they have to face the exploitation and marginalisation with in the country they have immigrated\textsuperscript{48}. Thus due to this reason, they have to prove their basic necessities and entitlements in order to secure their basic needs.

Though these countries are the welfare states and several social policies exist but these immigrated individuals are still excluded from these policies. The only policy which is helpful to them is the “Welfare payments” which help these individuals in accessing a small amount of material wealth\textsuperscript{49}. “Young in this context provides that the provision of welfare sometimes produces the injustices where the dependants they are deprived of the rights and freedoms that others have.” Thus with this reason marginalisation is unjust because it blocks all the opportunities which need to be exercised by these newcomers in their recognized way\textsuperscript{50}. In fact sometimes these welfare support programs further lead to injustices by restricting certain behaviour. This shows that there is a total ignorance of human essence and further continuation of cycle of dominance\textsuperscript{51}.

\textbf{Critical Analysis of the Discrimination among the Vulnerable Groups}

In the background of the above it is expedient to analyze on what basis these groups of the Indian Society face discrimination and have remained deprived of the fruits of the Indian’s socio economic developmental programs. The research studies indicate that these Marginalised/ Unadvantaged/ Underprivileged/ are the victims of the structural discrimination\textsuperscript{52}.

\textbf{Diagrammatic Analysis of Discrimination}

The following two diagrams indicates the structural discrimination being faced by these groups of Indian Society, which are identified as Vulnerable groups facing structural discrimination, \textit{viz} – Scheduled Castes, Scheduled Tribes, Dalits, Socially and Economically Backward classes (SEBCs) (also known as Other Backward

\textsuperscript{48} Ibid.
\textsuperscript{50} Id. at p.41
\textsuperscript{52} See, Chandrima Chatterjee and Gunjan Sheoream, \textit{Vulnerable Group in India}, p.4, 2007.
Classes); Women, Old Aged Person, Children, Disabled on account of disability, Girl child as a Domestic servant and any other kind of Bonded Labour, Workers, Contractual Labourers.

**Diagram 1:** Showing Human Rights and Human Dignity of Disadvantaged known as Vulnerable Groups
Diagram 2. Showing Structural Discrimination faced by Groups

Source: Chandrima Chatterjee and Gunjan Sheran, Vulnerable Groups in India, 2007 at p. 6.

The above two diagrams with regard to the structural discrimination indicate that the Indian Citizens who belong to such vulnerable group are unable to acquire and use their rights as are being acquired and used by “The Haves”. This means that these have- not groups suffers because they are deprived of life and liberty with dignity in terms of education, housing, employment, justice and equality. It also infers that Rule of law does not serve Rule of life for such have- not’s. And also establishes a deep contrast between sustainability and vulnerability for such have- not’s because issues like sustainable livelihood, social, economic, and political justice seems to be the major problems in India. Besides of having the “Affirmative Action” for these vulnerable groups they still are deprived of the policy of “distributive justice” and “economic justice”, as the governmental policies have failed to guarantee have- not’s dignity in the right perspective.
These have-not’s groups continue with their dialectic efforts to have the benefits of social, economic and political justice as equitable participants in the democracy, but the governmental policies have still failed on the implementation level. Though the government of India acceded to the International Covenant on Economic, Social, and Cultural Rights in 1971, but the guarantee to every citizen to sustainable livelihood, social, economic and political development for the marginalised groups has so far not been progressively advantageous. This is due to the reason that human rights norms and standards are not strongly enforced on the basis of prioritization and sensitization\textsuperscript{53}.

For example, prioritization and sensitization necessitates the needs to focus on the immediate service delivery by prioritizing and sensitizing the needs in terms of Public Health, Education, Economic Empowerment, Security Empowerment, for such Marginalised population of Indian Society. It allows review of context specific violations, identify challenges faced by the specific groups and their access to life and liberty in terms of livelihood, living care, health care, and to gather information on group-specific risk factor, cultural and social differences among groups and its impact on their human dignity. This facilitates advocacy for the Right to human dignity and empowers the disadvantaged groups by raising awareness about their rights and potential violations\textsuperscript{54}.

**Casteism: A phenomenon of Inequality**

Castes also perpetrate inequality in Indian society and dignity is a particular form of social inequality that involves a hierarchy of groups ranked in terms of ritual purity where members who belong to a particular group or stratum share some awareness of common interests and a common identity.

The caste system is linked to the possession of natural resources, livelihood resources and in the Indian context also to land economy and land based power relations. Traditionally, caste relations were based on the hierarchy of occupations and were placed

\textsuperscript{53} *Ibid.*

\textsuperscript{54} Different societies have different conditions/situations that generate and perpetrate vulnerability among certain individuals and groups. Hence identifying vulnerable groups within the rights to health framework is an ongoing process.
at the bottom. People or castes that were performing the task of eliminating the polluted elements from society were considered as “untouchables” vis-a-vis the highest in the order based on the purity – impurity principles. Structurally the lower castes were economically dependent on the higher castes for existence. The Scheduled castes remained economically dependent, politically powerless and culturally subjugated to the upper class. This impacted their overall lifestyles and access to life and liberty, equality in terms of food, education and health. A major portion of the lower castes and Dalits are still dependent on others for their livelihood. Dalits does not refer to a castes but such groups suggests a group who are dalits does not refer to a castes but such groups suggests a group who are in a state of oppression, social disability and who are hapless, helpless and poor and were earlier referred as “untouchables” mainly due to their low occupation that is Cobbler, Scavenger, Sweeper. In a caste dominated country like India Dalits who comprises of the one – sixth of the Indian population stand as a community whose human rights has been severely violated in terms of literacy rates. Among Dalits only about 24 percent, have meager purchasing power; have poor housing conditions; lack or have low access to resources and entitlements. In rural India they are landless poor agricultural labourers attached to the rich landowners from generations or poor casual labourers doing all kind of available work and are the worst suffers of the society as bonded labour. In the city they are the urban poor employed as wage labourers at several work sites, beggars, vendors, small services providers, domestic help etc., living in slums and other temporary shelters without any kind of social security. The members of these groups face systematic violence in the form of the denial of access to land, good housing, education and employment.

A large proportion of Dalit girls drop out of the primary schools, in spite of reservations and academic attitude because of poverty, humiliation, isolation or bullying by teachers

55 See, In India the percentage of home delivery is highest (59 percentage) whereas institutional delivery accounts for only 40.5 per cent. Home delivery assisted by skilled birth attendant’s accounts for 7.1 per cent. Institutional delivery by background characteristic shows that only 22 per cent childbirths of Scheduled Tribes women take place in institutions as compared to 33 per cent births to Scheduled Castes women. (RCH – DLHS- 3, p. 98, 2002- 2004.)
56 See, Dalits in India are poor, deprived and socially backward. They have faced severe forms of human rights violations. They have been involved in a long struggle to abolish untouchability and caste discrimination.
for not scoring good grades\textsuperscript{57}. Thus they are vulnerable to stress and strain and diseases with reduced access to healthcare.

The Scheduled Tribes too face the structural discrimination within the Indian Society. The Scheduled Tribes are a product of Marginalisation based on the ethnicity which is around 84.3 million and is considered to socially and economically disadvantage. they are mainly landless with little control over the resources such as land, forest and water\textsuperscript{58}. They constitutes a large proportion of agricultural labourers, casual labourers, plantation labourers, plantation labourers, industrial labourers etc. this has resulted in poverty among them, low levels of education, poor health and reduced access to health care services. They belong to the poorest of the poor. They are less likely to afford and get access to health care services when required\textsuperscript{59}. The health outcomes among the Scheduled Tribes are very poor even as compared to the Schedule Castes. The infant Mortality Rate among Scheduled Castes is 83 per 1000 live births while it is 84.2 per 1000 per live births among the Scheduled Tribes\textsuperscript{60}.

**Age-based marginalisation**

Children and the elderly population face different kind of vulnerability, Mortality and morbidity among children are caused and compounded by poverty, their sex and castes position in society. All these have consequences on their nutrition intake, access to health care, environment and education. These factors directly impacts food security, education of parents and their access to correct health information and access to health care facilities. Malnutrition and chronic hunger are the important causes of death among children from poor families. Poverty has a direct impact on the mortality and morbidity among children. In India, children’s vulnerabilities and exposure to violations of their protection rights remain spread and multiple in nature. The manifestations of these violations are various, ranging from child labour, child trafficking, to commercial sexual

\textsuperscript{58} Ibid.
\textsuperscript{59} See, Women’s health, Booklet for National Health Assembly II, compiled by Sama Group for Women and Health, New Delhi, October 2006.
\textsuperscript{60} See, National Health Policy, Government of India, 2002; See also, Advancing Right to Health: The Indian Context, by Sama: Resource Group for Women and Health, New Delhi, p.26, 2006; See also B.R. Ganatra, K.J. Rao & V.N.Coyaji, Community cum Hospital Based Case Control Study on Maternal Mortality: A Final Report, KEM Hospital Research Centre, Pune, India, 1996.
exploitation and many other forms of violence and abuse\textsuperscript{61}. In India, the population of the elderly is growing rapidly and is emerging as a serious area of concern for the governmental and the policy planners\textsuperscript{62}. Among elderly, the widows, the poor and disabled are more disadvantaged. Widows face structural disadvantages associated with gender and marital status. There is a striking gender differential that exists in the ownership of property and assets and in the participation of the management\textsuperscript{63}.

**Health & Marginalisation**

Disability poses greater challenges in obtaining the needed range of services. Persons with the disabilities face several forms of discrimination and have reduced access to education, employment and either socio-economic opportunities. In India there is an increase of proportion of disabled population. The proportion of disabled population in India is about 21.9 million. With the result that there are two broad categories of disability, one is acquired which means disability acquired because of accidents and other medical reasons the other is disability since the onset of birth\textsuperscript{64}. Mental illness is a prominent form of disability\textsuperscript{65}. Five out of ten leading causes of disability and premature death worldwide are due to the psychiatric conditions\textsuperscript{66}.

**Migration, Gender & Marginalisation**

Migrants such (as a consequences of Inter – State Migrant workman, Internationally Displaced Persons) and their denial of rights have to be understood from the existing contradictions within and across countries – from skilled and voluntary migrants at one

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\textsuperscript{63} See, National Sample Survey, 52\textsuperscript{nd} Round, 1998.

\textsuperscript{64} See, National Sample Survey Organization Report (58\textsuperscript{th} Round), about one third of the disabled population have disability since their birth. There are interstate and inter regional difference in the disabled population. The disabled face various types of barriers while seeking access to health and health services. There are different types of disability and the needs of the disabled differ accordingly, among those who are disabled women, children and aged are more vulnerable and need attention.

\textsuperscript{65} See, Census report on Mental Illness as a form of Disability, 2001.

\textsuperscript{66} See, World Wide Health Organization, 2002.
end of the spectrum to the poor and unskilled migrant population on the other end destined to be excluded from the fabric of the host / areas. Internal migration of poor labourers has also been seen on the rise in India. The poor migrants usually end up as casual labourers within the informal sector. The population is at the high risk of diseases and faces reduced access to health services\textsuperscript{67}. Among the migrants who are vulnerable, the Internally Displaced People (IDPs) deserve mention.

In India the internally Displaced People are estimated to be around 6 lakhs\textsuperscript{68}. Internal displacement arises out of ethnic conflicts, religious conflicts, political reasons, developmental projects, natural disasters etc. The Internally Displaced People are vulnerable to health risk and access to treatment. The emotional stress of displacement and the toll that this takes does not have a great impact on physical as well as mental health. Large numbers of mental health problems are reported among the Internally Displaced People. Stress disorders leads to cardio-vascular stress, psycho – trauma, endocrine Stress, muscular – skeletal stress, stress – belly and cranial stress. Hypertension, reactive depression and nervous breakdown are common even among the youth who are Internally Displaced People. There are reports of lack of basic facilities like food, medical supplies and sanitation in the State Government organized relief camps for the internally displaced people in case of political conflicts\textsuperscript{69}.

Women and child migrants are the most vulnerable. In case of internal migration in India, women and children mostly migrate as associated migrants with the main decision to migrate being taken by the male of the household. As associated migrants, they suffer greater vulnerability due to reduced economic choices and lack of social support in the new area of destination. In case of semi – skilled, low skilled or unskilled women migrants, this can translate into their entry into the low paying, unorganized sector with

\textsuperscript{67} See, Pascale Allotey, “Is the Health a Fundamental Rights for Migrants”, Vol. 46, No 3, Guest Editorial Column in the journal Development, September, 2003. The NCRL estimates the number of internal labour migrants in rural areas in India alone at around 10 million (including roughly 4.5 million inter-state migrants and 6 million intra-state migrants in 1999 – 2001). The 2001 Census, has recorded about 53.3 million rural to rural migrations with in the country. Delay in health seeking also due to associated costs, inability to miss work, problems of transportation. Many are unfamiliar with the local health care systems and have linguistic or cultural difficulties communicating their problems.

\textsuperscript{68} See, IDMC, 2006.

\textsuperscript{69} See, Human Right Watch, April, 2006.
high exposure to exploitation and abuse. International migration of women for employment has also increased.

In India, there are a large number of international women migrants. Female migration to India constitutes 48 per cent of the total migration from other countries. Migration among women has been high from Bangladesh and Nepal as compared to the other neighboring countries. Low/skilled or semi-skilled migration has an impact on their choice of occupation and the conditions of work. Many of the low/semi skilled female migrants work in the unorganized sector in hazardous conditions live in shanty arrangements and are denied access to health and healthcare.

Trafficking also contributes to the cross-borders movement of a large proportion of women and children into other countries. There are established routes of trafficking in India, used to facilitate the movement of women and children from across the borders in order to sustain the underground economy. Women and children in an irregular situation are doubly vulnerable owing to their lack of proper legal status and high risk of sexual exploitation and suffer from poor antenatal care coverage, prevalence of anemia, prevalence of reproductive tract infections experience high incidences of violence. Children of poor migrant parents suffer from malnutrition and low immunization due to their parent’s perpetual low-income uncertain jobs that necessitates frequent shifts based on concentration and are more susceptible to HIV/AIDS infections.

**Justification**

Above highlighted points discern that structural discrimination against the marginalised groups’ takes place in the form of physical, psychological, emotional and cultural abuses which receives legitimacy from the social structure and the socio-political system. Physical segregation on the settlement is common phenomenon forcing them to live in most unhygienic, inhabitable conditions. It also discerns that structural discrimination directly impedes access to life with dignity by way of exclusion. Therefore it is

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70 Many of the migrant women work as a domestic help, in beauty parlors as helpers, sweepers and prostitutes etc.
imperative to conduct a study to analyze the contours of marginalisation and its impact on the right to human dignity.

On account of these reasons, the researcher has opted for the research problem, “**Right to Human Dignity: A Critical study with special reference to Marginalised sections in India**”.

The researcher has selected this problem for the purpose of making the public aware that no one can be deprived of his/ her rights as they are guaranteed by the Constitution of India in order to protect their interests in the society. In addition to this the research problem which is being undertaken by the researcher has limited the scope of study, as the word Marginalisation is a very wide term and includes a vast range of the different sections of the society, but here the researcher has restricted the study to the visibly dominant marginalised groups like, Scheduled Castes, Scheduled Tribes and Other Backward Classes; Hawkers, Slum Dwellers, Beggars, Prostitutes and the Persons suffering from Disability in India.

**Objectives**

The research study thus conceived aims at having deep insights into the issues concerning Human Rights & Human Dignity of marginalised/ underprivileged/ neglected/ deprived/ vulnerable groups or segments of the Indian society keeping in view following objectives:

1. To identify main disadvantaged/ marginalised groups.
2. To identify the legal regime and services that are available to protect their rights.
3. To collect disaggregated information on several disparities among the marginalised groups.
4. To review the existing Constitutional provisions in India that can be used to evolve right to dignity of such groups in the light of International Conventions.
5. To assess the relevance of Statutory provisions in safeguarding the dignity of human beings especially the marginalised groups.
6. To identify barriers to the implementation of relevant laws, obligations and commitments.

7. To analyze the judicial response in reference to the marginalised groups.

**Research Methodology**

In the background of the above, the researcher aspired to undertake the conceived research problem, for an in-depth “expositor probing”. The “expositor probing” has its genesis in “doctrinal legal research methodology”. The results of such expository probing have been presented systematically, scientifically, methodologically, analytically and analogically.

The Researcher has, for the purpose of present study, chapterised the study as under:

**Outline of the Content of the Chapters**

In the **Introductory** Chapter the researcher is delineated the contours of the present study and has explained the concept of Human Dignity and Marginalisation including the types and the reasons for the same.

In the next Chapter titled, **“Human Dignity of Marginalised Section of the Society: A Conceptual Analysis,”** the researcher has discuss the International and the National regime concerning Human Dignity. The Chapter also explains the various types of marginalisation and the reasons for the same.

In the Chapter titled, **“Constitutional Perspective of Human Dignity of Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes of Citizens”,** the dimensions of the Constitutional provisions have been analysed. The Chapter also highlights the judicial trends concerning the Affirmative action in enforcing and protecting the dignity of Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes of Citizens.

The next Chapter titled, **“Hawkers, Slum Dwellers, Prostitution and Beggary: A Case of Economic Marginalisation”**, discusses a glimpse the reasons, types and the causes of economic marginalisation of the specified category of persons. The highlight of this
Chapter is the analysis of the Constitutional provisions, Statutory Provisions and the judicial delineation.

The next Chapter titled, “Health Marginalisation: Human Dignity of Disabled Persons”, discusses at length the impact of health marginalisation on the concept of Human Dignity of persons. The researcher has tried to analysed the Constitutional and the Statutory provisions concerning the plight of people living in an undignified way on account of health marginalisation.

Finally, the researcher has given his concluding observations and humble summations in the Chapter titled, “Conclusion and Suggestions”, which pinpoints the undignified way of existence of the marginalised section of the Indian society. The researcher believes that the lacunae pinpointed can be rectified if all the sections of the Indian society work harmoniously for the welfare of the people.