

# LAW AND IMPOVERISHMENT<sup>1</sup>

## Elective Course

This course seeks to examine the relationship between legal institutions and poverty wherein the former not only act as critical tools for empowerment and emancipation but also serve as instruments of impoverishment and exclusion. The course would examine this multifaceted relationship from the perspective that poverty is not a natural or a historically inevitable phenomenon but is the dynamic result of conscious public decision-making and would therefore analyse legal institutions, legislation and policies to understand their impoverishing or empowering potential.

## Objectives of the Course

- 1) Introduce students to different conceptions of poverty used by policy-makers and theorists, particularly the capability approach.
- 2) Discuss issues of inequitable distribution of land, development induced displacement and denial of livelihood and housing rights to urban poor to illustrate the impoverishing role of law and legal institutions
- 3) Analyse the role of legal resources in combating poverty and more particularly, discuss the importance of understanding poverty through the prism of the human rights framework and study contemporary efforts at poverty reduction through creation and assertion of legal rights.

## Eligibility

The Course shall be open to a maximum of 40 students (20 from 3<sup>rd</sup> Year, 10 each from 4<sup>th</sup> Year and 5<sup>th</sup> Year). Students shall be enrolled on a first-come-first-served basis.

## Mode of Evaluation

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| 1) Project Paper (3000 words)        | 30 Marks |
| 2) Project Presentation              | 10 Marks |
| 3) Seminar Presentation <sup>2</sup> | 5 Marks  |

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<sup>1</sup> Course Teacher: Saurabh Bhattacharjee, Assistant Professor (Law)

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| 4) Class Participation                   | 5 Marks  |
| 5) End-Semester Examination <sup>3</sup> | 50 Marks |

## COURSE CONTENT

### **Module 1: Conceptualising and Defining Impoverishment – 8 Classes**

This module shall discuss the different conceptions of poverty used by policy-makers and theorists. Particularly, the module shall go beyond the income-based approach of defining poverty and examine the nuances of viewing poverty as a form of deprivation of capabilities and as a form of oppression.

#### **Essential Readings**

1. Upendra Baxi ed., *Law and Poverty: Critical Essays*, (Tripathi, 1988), Introduction
2. Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation*, (OUP, 1999) 9-23
3. Amartya Sen, *Idea of Justice*, (Allen Lane: 2009 ) 231-238, 253-260
4. Martha Nussbaum, *Capabilities as Fundamental Entitlements: Sen and Social Justice in Capabilities, Freedom and Equality: Amartya Sen's Work from a Gender Perspective*, (Agarwal, et al ed., Oxford:2007), 47-58
5. Iris Marion Young, *Justice and the Politics of Difference*, (Princeton University Press, 1990), 39-42, 48-63
6. Rehman Sobhan, *Challenging the Injustice of Poverty: Agenda for Inclusive Development in South Asia*, (Sage, 2011), 1-12

#### **Further Readings**

1. Amartya Sen, *Development as Freedom*, (OUP, 1999), 87-110
2. George Bernard Shaw, *The Intelligent Woman's Guide to Socialism, Capitalism, Sovietism and Fascism*, (Pelican Books, 1971), 41-49

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<sup>2</sup> From Second Module onwards, most of the classes shall be conducted through seminar discussions. Students would be required to lead one such seminar discussion in groups of two/three depending on the final enrollment for the course.

<sup>3</sup> Open-Book Examination

## **Module 2: Law as a Determinant of Impoverishment (12 classes)**

This module seeks to illustrate the impoverishing role of law and legal institutions through the specific examples of inequitable distribution of land, development induced displacement and denial of livelihood and housing rights to urban poor. The module shall also study the professed linkages between impoverishment and the global political and economic order so that they appreciate the argument that persistent deprivation cannot merely be attributed to local causes but is also inextricably linked to the current international institutional arrangements.

- Unequal distribution of land and material resources
  1. Land Distribution and Poverty
  2. Adivasis and Deprivation of Land rights
- Agrarian and Rural Crisis
- Development Induced Displacement
- Denial of Housing and Eviction
- Criminalisation of Poor and Denial of Right to Livelihood
  1. Vagrancy
  2. Restrictions on Informal Economy and Work
- International Dimensions of Poverty
  1. Right to food and Structural Adjustment

### **Readings**

#### **Unequal distribution of land and material resources**

1. Michael Lipton, *Land Reforms in Developing Countries: Property Rights and Property Wrongs*, (Routledge, 2009), 1-5
2. B.B. Mohanty, *Land Distribution among Scheduled Castes and Tribes*, Economic and Political Weekly, October 6 2001, 3859
3. Madhu Sarin, The Biggest Landlord, Down to Earth, June 15, 2007, available at <  
<http://www.downtoearth.org.in/print/6056>>

#### **Agrarian and Rural Crisis**

1. P. Sainath, *Everybody Loves a Good Drought*, (Penguin:1996), ix-xiii, 3-19

### Development Induced Displacement

1. Smitu Kothari, Whose Nation? *The Displaced as the Victims of Development*, Economic and Political Weekly, 31 (24), June 15 1996, p. 1476.
2. Usha Ramanathan, 'Displacement and the Law', Economic and Political Weekly, 31 (24), June 15 1996, p. 1486.
3. S.P. Sathe, Supreme Court and the NBA, Economic and Political Weekly 35 (46), November 11, 2000, 11-17
4. Sripad Dharmadhikary, *Resettlement Policy: Promising Start and a Let Down*, Nov. 12, 2007, India Together, available at <http://www.indiatogether.org/2007/nov/hrt-randropol.htm>
5. Michael Leivin, *Rationalising Dispossession: The Land Acquisition and Resettlement Bills*, Economic and Political Weekly, 46(11), 66-71

### Denial of Housing and Eviction

1. Usha Ramanathan, *Illegality and the Urban Poor*, Economic and Political Weekly, July 22, 2006
2. Miloon Kothari, Sabrina Karmali and Shivani Chaudhary, *The Human Right to Adequate Housing and Land*, (National Human Rights Commission, 2006), pp. 43-61, 88-95

### Crime, Poverty, Denial of Right to Livelihood and Criminalisation of the Poor

1. Usha Ramanathan, *Ostensible Poverty, Beggary and the Law*, The Economic and Political Weekly, 43 (44), Nov.1, 2008, 33
2. Parth J. Shah and Naveen Mandava, *Law, Liberty and Livelihood: Making a Living on the Street*, (Academic Foundation: 2005), 19-39, 227-243
3. Dan Banik, Rights, *Legal Empowerment and Poverty: An Overview of the Issues in Rights and Legal Empowerment in Eradicating Poverty* (Dan Banik ed., Asghate:2008), 17-20
4. Chattoraj and Sinha, *Improvement of Criminal Justice Administration to Alleviate Poverty in India*, 28 (2) Indian Journal of Criminology and Criminalistics 4 (2007)

### International Legal Dimensions of Poverty

5. Smita Narula, *The Right to Food: Global Actors Accountable under International Law*, 44 Colum. J Transnat'l L. 691-724 (2006)
6. Thomas Pogge, *Recognized and Violated by International Law: The Human Rights of the Global Poor*, 18 Leiden Journal of International Law, 717-721 (2005)

### Cases

1. TN Godavarman v Union of India
2. Narmada Bachao Andolan v Union of India
3. Butu Prasad Kumbhar v SAIL 1995 Supp 2 SCC 225
4. *Ram Lakhan v State*, Criminal Revision Petition No 784 of 2006, Date of Judgment: December 5, 2006, available at <http://indiankanoon.org/doc/434096/> 137(2007)DLT173
5. *Manushi Sangathan v Govt. of Delhi*, Writ Petition (Civil) No. 4572/2007, Date of Judgment: January 10, 2010, 68(2010)DLT168
6. Almitra Patel v Union of India, 1998) 2 SCC 416
7. Sodan Singh v NDMC AIR 1989 SC 1988
8. Genda Ram v MCD 2010 (11) SCALE 36

### Further Readings

1. S. Muralidhar, *Law, Poverty and Legal Aid: Access to Criminal Justice*, (LexisNexis-Butterworths, 2004), 255-272
2. Land Acquisition Bill, 2007, PRS legislative brief available at [http://www.prsindia.org/uploads/media/Land%20Acquisition/bill167\\_20080311167Legislative\\_Brief\\_Land\\_Acquisition\\_Bill.pdf](http://www.prsindia.org/uploads/media/Land%20Acquisition/bill167_20080311167Legislative_Brief_Land_Acquisition_Bill.pdf)

### **Module 3: Legal Empowerment and Poverty: The Jurisprudence of Rights-based Approach (10 Classes)**

This module shall examine the use and potential of law as an instrument for poverty reduction and empowerment. More specifically, we shall discuss the importance of understanding poverty through the prism of the human rights framework, the overlap between international human rights and poverty eradication and weaknesses of the right-based approach.

- The scope and content of rights-based approaches to poverty alleviation
- International Human rights Law and Poverty
- Opposition to Poverty as Human Rights
- Indivisibility of Rights
- Rights, Poverty and Judicial Review
- Capabilities and Rights

### **Readings**

1. Centre for Economic and Social Rights, *Human Rights and Poverty: Is Poverty a Violation of Human Rights?* Human Rights Insights No.1, available at < <http://www.cesr.org/article.php?id=277>>
2. Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (2<sup>nd</sup> ed., Princeton University Press, 1996), 13-29, 35-64
3. Steiner, Alston and Goodman, *International Human Rights in Context: Law, Politics, Morals*, (3<sup>rd</sup> ed., OUP, 2007), 294-347
4. Srilatha Batliwala, *When Rights Go Wrong*, Seminar January 2007,
5. Aryeh Neier, *Social and Economic Rights: A Critique*, 13/2 Hum. Rts. Brief. (2006)
6. David Bilchitz, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* (Oxford, 2007), 119-132
7. Martha Nussbaum, *Capabilities as Fundamental Entitlements: Sen and Social Justice in Capabilities, Freedom and Equality: Amartya Sen's Work from a Gender Perspective*, (Agarwal, et al ed., Oxford:2007), 42-47

### **Cases**

1. *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180
2. *PUCL v Union of India* (2001)
3. *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC)
4. *Minister of Health v Treatment Action Campaign* (2002)

### **Further Readings**

1. F.B. Cross, *Error of Positive Rights*, 48 UCLA L. Rev. 857 (2001)

2. Mark Tushnet, *Social Welfare Rights and Forms of Judicial Review*, 82 Texas Law Review 1895 (2003)
3. Ellie Palmer, *Judicial Review, Socio-Economic Rights and the Human Rights Act*, (Oxford, 2007), 11-48

**Module 4: Welfare, Activism and Law Reforms: Institutional Issues in Tackling Poverty Through Law (10 classes)**

The module shall examine legislative, judicial and policy attempts towards poverty eradication through legal empowerment at national and international level and critically analyse these experiments and identify their strengths and weaknesses and their potential for replication.

1. Constitutional, judicial and legislative efforts towards rights assertion
  - Right to Food
  - Right to Work
  - Right to Housing
1. Social Action Litigation
2. Legal Aid and Access to Justice
3. Welfare and Labelling
4. Cash Transfers and Public Services

**Readings**

1. Jean Dreze, *Democracy and the Right to Food in Human Rights and Development: Towards Mutual Reinforcement* (Alston and Robinson ed., OUP, 2005), 45-64
2. Philip Alston and Nehal Bhuta, Human Rights and Public Goods: Education as a Fundamental Right in India, in *Human Rights and Development: Towards Mutual Reinforcement* (Alston and Robinson ed., OUP, 2005), 242-268
3. Armin Rosencranz, *The Forest Rights Act 2006: High Aspirations, Low Realization*, 50 (4) JILI 656 (2008)
4. Gopinath Reddy et al, Issues Related to Implementation of the Forest Rights Act in Andhra Pradesh, *Economic and Political Weekly*, 46 (18), April 30, 2011, 73
5. Indira Hirway, *NREGA After Four Years: Building on Experiences to Move Ahead*, *The Indian Journal of Labour Economics*, Vol. 53, No.1, p. 113 (2010)

6. Nick Robinson, *Closing the Implementation Gap*, The Hindu, March 12, 2011
7. Upendra Baxi, *The Avatars of Indian Judicial Activism: Explorations in the Geographies of (In)Justice in Fifty Years of the Supreme Court: Its Grasp and Reach* (Verma, Kusum ed., Oxford, 2000), 156-165
8. S. Muralidhar and Ashok Desai, *Public Interest Litigation: Potential and Problems in Supreme but not Infallible - Essays in Honour of the Supreme Court of India* (B.N. Kirpal et al. eds, New Delhi: Oxford University Press, 2000), p. 159
9. Mamta Rao, *Public Interest Litigation: Legal Aid and Lok Adalats*, (EBC:2010), 340-379
10. Herbert J. Gans, *The War Against the Poor*, (Basic Books, 1993), 68-73, 106-109
11. Mihir Shah, Direct Cash Transfer: No Panacea By Itself, The Hindu, September 20, 2008
12. Jayati Ghosh, The Siren Song of Cash Transfers, The Hindu, March 03, 2011
13. Guy Standing, Give Cash Some Credit, Indian Express, May 28, 2011

#### **Cases**

5. *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180
6. *PUCL v Union of India* (2001)
7. *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC)
8. *Minister of Health v Treatment Action Campaign* (2002)

#### **Further Readings**

1. Laura Rawlings and Gloria Rubio, Evaluating the Impact of Conditional Cash Transfer Programmes, World Bank Research Observer, Vol. 20 (1), 29-55 (2005)
2. Das, Toan-Do and Ozler, Reassessing Conditional Cash Transfer Programmes, World Bank Research Observer, Vol. 20 (1), 57-80 (2005)
3. Ellie Palmer, *Judicial Review, Socio-Economic Rights and the Human Rights Act*, (Oxford, 2007), 42-48
4. S. Muralidhar, Law, Poverty and Legal Aid: Access to Criminal Justice, (LexisNexis-Butterworths, 2004), 1-7, 24-28, 375-396
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## **LEAD QUESTIONS FOR EACH MODULE**

### **MODULE 1**

#### **CONCEPTUALISING AND DEFINING IMPOVERISHMENT**

1. How do we understand and comprehend poverty?
2. Are the traditional forms of conceptualising poverty adequate?
3. Should we conceive of poverty in purely economic terms?
4. Does Baxi's thesis on impoverishment allow for a more comprehensive understanding or is its utility limited only to the realm of rhetoric?
5. What are the advantages of Amartya Sen's conceptualisation of poverty as capability deprivation?
6. What are the connections between Baxi's claims and Sen's conceptualisation of poverty as capability deprivation?
7. Do Iris Young and Rehman Sobhan further the Baxian thesis on impoverishment as a structural process?
8. Does Iris Young give us an alternative model to evaluate state policies and their connections with impoverishment?

### **MODULE 2**

#### **LAW AS A DETERMINANT OF IMPOVERISHMENT**

1. What is the nexus between land reforms and impoverishment?
2. Are state institutions complicit in the current agrarian and rural crisis in India?
3. What are the linkages between the development agenda and impoverishment? Are such linkages essential and inherent to the development process?
4. How do current statutory and administrative institutions foster this linkage between development and deprivation?
5. Does our dominant paradigm of environmental protection serve to exclude various sections of Indian citizenry?

6. What is the role of the judiciary in creating a paradigm of environmental protection and urban planning that disenfranchises the urban poor
7. How is denial of economic freedom a cause of impoverishment and what are the legal restrictions that have been imposed on the economic freedom of identified sections of the citizenry?
8. Are the claims that criminal law operates differently on the impoverished persuasive and well-substantiated?
9. On what basis do Smita Narula and Thomas Pogge implicate international legal and financial order in production and perpetuation of poverty?

### **MODULE 3**

#### **LEGAL EMPOWERMENT AND POVERTY: THE JURISPRUDENCE OF RIGHTS-BASED APPROACH**

1. What are the differences between rights-based approach and economic or policy centred approaches to poverty?
2. Is it proper to see poverty as a human rights issue?
3. Why were classical thinkers reluctant to view poverty as a human rights issue?
4. Is the distinction between civil-political and socio-economic rights sustainable?
5. Does the structure of rights and duties drawn by Henry Shue impose any obligations on non-state actors?
6. What is the import of the distinction between accidental deprivation and essential deprivation, especially with regard to the issues discussed in the previous module?
7. Do proponents of rights-based approach adequately respond to concerns expressed on institutional limitations of judiciary?
8. What are the various ways in which international bodies and national court have tried to bridge the gap between poverty issues and human rights discourse?
9. Are the criticisms levelled against rights-based approach best applied to constitutionalisation of socio-economic rights or are they applicable to statutory rights too?
10. Does rights-based approach further the capability approach articulated by Sen, Nussbaum and others?

## **MODULE 4**

### **WELFARE, ACTIVISM AND LAW REFORMS: INSTITUTIONAL ISSUES IN TACKLING POVERTY THROUGH LAW**

1. Does the Indian experience with Right to Food and Right to Education help us in evaluating the arguments for and against rights-based approaches?
2. Do we find echoes of Varun Gauri in Philip Alston and Jean Dreze's assertions on Indian experiment with judicial affirmation of socio-economic rights
3. Can we draw any insights from the initial assessments of the MNREGA and the Forest Rights Act on the relevance of rights-based approach to poverty?
4. What is the role of legal aid and SAL/PIL in anti-poverty discourse?
5. What are the concerns that Baxi, Muralidhar have raised against the trajectory of PIL/SAL?
6. What are the weaknesses of the major legal aid institutions in India?
7. Are the arguments expressed in favour of Conditional Cash Transfers persuasive?