**Nexus of Law in Governance in India Exploring the Impact on Justice and Conduct**

- Mahmood Ansari

**Abstract:** The write-up deals with the pattern and characteristics of governance through the orchestration of positive law and continuing practices of the Indian judiciary in the service of attainment of justice for citizenry and populace in the country. The working and enforcement of positive law and legislations that are directed to advancing the societal justice and economic fairness in the distribution of benefits of access, availability and provisioning of food, employment assurance and child welfare and the associated burdens in the country is case studied. An appraisal is made of the governance and the successes of the law-making practices and judicial interventions in impacting, influencing and changing the prevailing attitude, preference and conduct of citizenry and public agency towards legitimate, lawful and fair ones in the Indian society.

**Key Words:** Justice, positive law, human conduct, governance, judiciary, India, food, employment, child welfare

**Introduction**

Justice is integral to governance. To govern a country is to impart propriety, impartiality and fairness to the populace. It is the aggregate level of efficient and effective management and administration across a polity, society and economy of countries that do necessarily induce, buttress and facilitate the interpersonal conduct of propriety, uprightness and fairness on a mass scale. The securing and conferring of equal respect, liberty and freedom on a mass scale is essentially enmeshed, and thereby, accomplished in the course of a plethora of human actions, a host of affairs and institutional processes of steering, administering and managing at the level of a nation.

Governing matters for impartiality and equitability. It is the opening door to securing and rendering uprightness in the society. It is then imperative to assert at least three concise and relevant observations on the relation of uprightness with governance in the context of India, a country under consideration in the present research project, as elsewhere in the world.

One, justice, fairness and uprightness for the populace as a set of hybrid actions of private individuals of the civil society and public functionaries of the government are integral part of the wider canvass of a plethora of similar hybrid actions of private individuals of the civil society and public functionaries of the government in steering, managing and governing of a nation.

Second, if at all the extent and level of attainment of the fair play, propriety and uprightness in the society and economy is ever appraised, the route to such endeavor towards assessment must necessarily and unfailingly pass through and mediated by an extensive analysis of the characteristics, patterns and outcome of the national stewardship and administration.

Third, the conjoint conceptual framework on the relation of the performance of justness for citizenry with the executions of steering and managing the nation in a study on the issue of assessment of the uprightness and fairness is therefore a befitting and realistic approach to proceed with.

The study is centered at the analysis of socio-economic fairness and uprightness at the societal level among those who are starved, hungry and destitute, these who are disengaged, workless and unemployed, and those whose children are uncared, unprotected

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1 The author is Professor in Economics, Assam University, Silchar, Assam, India

2 Governance as a terminology was used in the 14th century Europe to signify a lawful control over the affairs of a political unit, usually a nation, and was contrasted with ‘colonization’. It was conceived as a lawful act of making decisions about and looking after of ‘something’ in general. In the contemporaneous conceptual-theoretical literature on governance, governance paradigm and governance regime, attempts have been made to link governance with market principles, operation of market, and market outcomes.

3 Justice is an ancient aspiration of human settlements. Such aspiration may be traced in as remote an edict as the Babylonian Codes of Hammurabi. The Roman jurists and medieval Semitic theologians had their own specific religious doctrines and sermons on the theme of fairness and justice. The idea of justice had its journey from antiquity till the dominance of classical liberal philosophy. Classical liberalism, whose foundation was laid down with the European Enlightenment project, construed justice in terms of ‘individual rights’ and ‘legal egalitarian values’. Being distinct from benevolence, charity, prudence, mercy, generosity and compassion, the notion of justice demands something in excess of, and of course, beyond such values and virtues of human beings. Seekers of justice in all ages have meant various things in the name of fairness and justice – commutative justice, retributive (restitution) justice and distributive justice.
and insecure in the country. The case study is therefore in three areas: food security, employment assurances and child welfare. The economic provisioning, ethical directives and legal sanctions in these fields of the civil society and government bureaucratic interventions are the litmus test of the good, effective and efficient governance in securing the socio-economic justice in food, employment and child care.

In the perspective of the Indian national supervision, regulation and management, it is also of practical significance and meaningful relevance to enquire in the present work: whether such institutional constraints of aggregate practices as that of political economy, public ethics and positive law operating therein has either brought about, or rather failed to result in a change and transformation in the erstwhile inherited prevalent attitude, behaviour, preferences, and conduct of the citizenry and public functionaries.

With regard to methodology, the verbal and semantic arguments are mostly used to ascertain the level of attainment of equity and justice. The arguments are advanced through the use of tabulations of quantitative information as well. The data and information used are mostly from published secondary sources. There is no field survey and visits involved. The content of the thesis is based on the table work of synthesis of theoretical frameworks and systematization of the collated information from secondary sources of data in published literature in India.

The write-up is divided into three sections. In the first section, the description of the aggregative practices related with the positive legal and the actions of juridical governing of the nation towards facilitating the societal justice and economic fairness is furnished. What follows in the second section is an inquiry regarding the practices of enactment of legislations to initiate the legal and judicial processes and complete the private and public actions with regard to public distribution of access to food, assured employment and child care so as to provide remedy from injustices and undoing of injustices in the course of governing in the country. In the third section, the focus is on changes and transformation in the preferences, posture and conduct of citizenry and public functionaries as a result of decades of aggregative legal control and surveillance in India. The concluding remarks are tagged at the end.

1. Practices of Positive law

To begin with the jurisprudential and juridical standing of India, it had its oldest written laws of the land contained in a classic text called the “Manu-Smriti”. The country had been ruled on the farms (official orders) of the Slave dynasty and the Mughal kings in the medieval times. The British colonialism is credited to have laid down the foundation and base of the modern positive law in the country. The principles and practices of positive law in India is as much of a colonial heritage as that of the public ethics and the political economy. The British colonialism created a rupture in the erstwhile informal decentralised structure of practices of rules, regulations and edicts of various monarchies and fiefdoms by bringing the centralised top-down orchestration of the structures of rules, regulations and positive law in the country-wide administration.

The modern journey as a sovereign country for India began in real earnest in 1947. Its recognition as a constitutional democracy was firm up in 1950, with the adoption of a Constitution. The Constitutional law has provided the principles for governing the society, polity and economy with socialist and secular fervour, in addition to upholding the democratic norms and processes involved in the evolution of the welfare state. In addition to the corpus of written constitution, there is the plural and mixed framework of positive law in India. With a colonial baggage, the Indian legal system embraces today a multiplicity of laws and a mixed legal framework. Such a framework has entertained the positive law (man-made, written and mostly codified) in combination with the inheritance of the natural law tradition.

A considerable part in positive law is the set of written codes, gazettes, parliamentary and state assembly acts and judicial doctrines. Since 1950s, the rise of positive law has seen the demise of the no-intervention stance of the old tradition of the classical private law. The rise of positive law has brought home the scope of almost direct state intervention into private affairs of citizens and organizations for last seven decades. In the regime of positive law, the discretionary power and arbitrary fiat are not anymore the determiner of legal liabilities and duties as A V Dicey (1885) reminded. What had gone in the name of the Indian Civil Code, Indian Penal Code and Criminal Procedure Code in the days of British colonialism have survived till date, and these still command as the force of law of the land in the form of earliest codified written

4 Prior to establishment of the British colonialism, the country had a long tradition of Manu-Smriti that was the base of much of the moral law and natural law practices inherited from the past The canons of the Manu-Smriti used to be principally executed and implemented through the gram-panchayats at the village-level and mercantile groups at the level of Mofussil-townships. Many residual elements of this past tradition still survive in collective memories of the civil society.

5 In earlier times, the classical law had insisted that private law was the law whereas public law was legislation. The classical law prevailed for long time, to be replaced by positive law and corpus of civil and criminal penal codes from the late 19th and 20th century. The classical law propounded a right-wing common conservative market-oriented legal theory by maintaining the no-intervention instance so that liberty of individuals could be prioritised. In India, the public law and statute has risen to gain prominence only, with the decline of common law and private law in the twentieth century.
law in the peninsula. After the demise of King’s Court of justice, the colonial rule did introduce the adalat at the district-level, Viceroy’s Court at Calcutta and Queen’s Court at London for India. To administer the law, the structure of judicial courts (now called the district, High and Supreme courts) and police hierarchies are also inherited from the past.

The positive law of justice as codified written corpus of civil and criminal laws has been inherited as the edifice of positive law was laid down by the British colonial empire during nineteenth century in India. What goes in the name of modern law of justice in the country is today an amalgam of yet not defunct British colonial Indian penal codes, criminal procedures codes and Indian civil codes and those of post-1950 constitutional laws, the Ordinances issued by the President of India, Acts and statutes of the Parliament and State Assemblies, and bureaucratic gazette, standards, rules and regulations, circulars, notifications, and orders, in addition to judge-made laws or judicial verdicts and case laws for the last seven decades.

The administering, managing and regulating through a myriad of public and private actions as inspired and forced by the inevitable operations of the coercive dictates of the positive law and judicial verdicts has been pervasive throughout the nooks and corners of the society and economy in India. Such a stewardship and administration through the machinery of the legal system of the country has comparatively been much more pervasive than the either the governance through the public ethical discourse or that through the political economy projects in India.

Be that as it may. Presently, the plural and mixed framework of positive law in the country comprises of the Constitutional laws framed by erstwhile Constituent Assembly (then dissolved in 1950), a series of the Ordinances of the President of India, and a series of the Acts passed by the Parliament and State Assemblies from time to time, in addition to the archive of rules, regulations, circulars of various organs of the State. The Lok Sabha, the Rajya Sabha and the President of India remain the continuous supreme law-making institution, after the dissolution of the Constituent Assembly, which compiled the Constitution of India.

In the framework of public positive law, the statutes are made by the legislature proper (the central as well that of the state level, and also the by the President of India through the Ordinances in India), and standards are set by the regulatory authorities (including the bureaucracy) of the state and the government. The judiciary is a statutory body and an institution that functions to interpret, review and clarify the true meaning of positive law. The judiciary restores the entitlements and rights of individuals, social groups and the functionaries of the government. In general, the judiciary administers, dispenses and secures justice on the basis of application of conscience, reasonable arguments and principles of jurisprudence.

In short, the positive law has the material and substantive content, which are comprised of the constitutional provisions, legislative enactments, statutes and ordinances, administrative and executive gazettes, circulars and orders of rules, and also judicial doctrines and verdicts. Governing through the legal system involves a myriad of actions of framing of laws, enactment, imposition and enforcement through a hierarchy of the organs of the state, including that of the police and judiciary and the regulation of the violations of laws through a structure of punishments, penalties and confinements in the prisons in nearly all district headquarters in the country.

There are at present 672 district courts, 25 high courts and one Supreme Court in the country to dispense justice. In the judicial organization of every state in the country, the High Court is the apex body. There are three or more tiers of the civil and criminal courts below the High court. The subordinate courts within the district courts are the civil courts, criminal courts and revenue courts. The three-tiered Indian Judiciary at the district, state and national level (hundreds of the district lower courts, dozens of the state-level High Courts and the single Supreme Court of India at Delhi) has been vested with securing justice by interpreting the plural framework of law of the land. In the long journey of dispensing justice through village panchayats to colonial adalats and colonial kachahri dispensing justice, the contemporaneous multi-tiered judicial courts have been vested with monitoring civil and criminal disputes and conflicts in the society and economy.

In the plural and mixed framework of a complex structure of law, legal system and multi-tiered judiciary in the country has been the institution of the Lok Adalat (people’s court). It came into existence in 1982. It has become a major helping hand to the judicial courts in the country. The concept of Lok Adalat stands as a unique contribution of the Indian legal system to the world legal jurisprudence. The lok adalat has become an integral part of the Indian legal system and has become the apertures for access to justice for the poor and the downtrodden. They have bridged the gap to legal aid. It is an informal system of justice dispensation which has largely succeeded in providing a supplementary form to litigants for determination and settlement of disputes. In the evolution of legal administration and stewardship, the advent of a legislation called the legal services authority act, 1987, has also been of great significance as it further gave the statutory status to these lok adalats.

A lok adalat has the same powers as are vested in a civil court under the code of civil procedure, 1908. The national legal services authority (NALSA) was constituted under the legal services authorities act 1987 which came into force in November 1995. It established a nationwide uniform network for providing free and competent legal services to the weaker sections of the society in the country. It is the national legal services authority along with other legal services institutions that conducts the proceedings of the lok adalats. The lok adalat has no jurisdiction in respect of any case or matter relating to an offense not compoundable under any law.
One more significant institution was added in the year of 2009. That was the innovative idea of conceiving a provision for village level justice in the country. It was the Ministry of Panchayati Raj that had prepared the draft Nyaya Panchayat Bill 2009. The Bill aimed to revitalise the concept of participatory grass root level dispute resolution by mediation, conciliation and compromise outside the formal judicial system. The said Bill provided for the establishment of the nyaya panchayat (justice dispensing adjudication body) at the level of either a village Panchayat (akin to adjudication body) or a cluster of village Panchayats. The idea was as such that these were conceived as the local institutions to be run by the local community members and answerable to local attitudes and locality needs. It was the village courts. The objectives of improving the access of and administration of justice to all citizens of the country have been the constitutional ideals, and the idea responded to this constitutional mandate.

There have been at least five states in the country where the institution has been operative. These states have been, namely, Bihar, Himachal Pradesh, Punjab, Uttar Pradesh and West Bengal. While the state of Jammu and Kashmir was a pioneer to pass the Assembly Act way back in 1958 to institute the nyaya panchayats, the provisions of both the Himachal Pradesh Panchayati Raj act of 1994 and the Punjab Panchayati Raj act of 1994 had provided for the gram panchayats in these two states to be entrusted with the judicial functions of deciding and settling of disputes at the level of the panchayats. Among all the five states, the institution is however functioning satisfactorily only in Himachal Pradesh.

Within the Indian judiciary, a further novel historical development has been the creation of a special bench called the Social Justice Bench. The bench was organised in December 2014 in the Supreme Court of India. This special bench has been vested with the responsibility to deal with the socio-economic issues so as advance the cause of the domain of social justice. This bench had been meeting once a week, under two judges, for next two years, before it got disbanded in March 2016. It was subsequently revived again in January 2017. Till the year of 2017, it was but not able to discharge, and therefore, there were nearly 65 cases related with socio-economic issues that were pending with the Bench.

A point is clear: there are constitutional laws on the fundamental rights of citizens to live with dignity and statutory laws on the rights to food (food security) and labour (employment – rural employment). There are but neither statutory laws nor constitutional laws on social justice in India. It is a matter of the constitutional ethics, as enshrined under the articles of the Directive Principles of State Policy (DPSP) that deals with social justice, and these are non-justiciable in a court. The onus of establishing judge-made law and a court directive on matters of social justice so as to supplement whatever the administrative orders do exist does vest with the social justice bench on a case-to-case basis.

In the course of administering, regulating and conducting the complex plural and mixed structure of the statutes and positive law and multi-tiered judiciary in India, one of the most distinctive elements has been the provision of social interest litigation. In the evolution of judge-made law and case-law, it has been revolutionary development. It had been the Supreme Court of India that made the innovation of the provision of public interest litigation since late 1970s and early 1980s. The public interest litigation as a powerful instrument of positive law has been drafted and defined by the judges, and not at all under any statute, or administrative law or constitutional law of the country. The public interest litigation was added to the legal system of the country in the framework of judicial activism.

The provision of such litigation is today the core of positive law in the country. It has been a powerful instrument of legal and judicial administration and conduct in the nation, of late. Such an innovation was necessitated, and was therefore begun with a written document, and in response to petition with a request to issue a writ to public offices and the government on a matter of public interest whereby there has been a breach and violation of the fundamental right, resulting in harms and injuries and wrongs to a group and a class of citizens, mostly poor, ignorant and incapacitated ones.

As late as in early 1980s, the provisions of public (social) interest litigation was laid down with the express purpose of allowing a third party to seek justice for someone ‘other’ – the other who is for various substantive reasons unable to come to the doors of

The legal scholars often attempt to frame their analyses within a theoretical framework. There are however legal scholarships, which are mostly in the forms and substances of theoretical perspectives. Theoretical perspectives are grand, which attempt to seek to understand the entire legal realm from a specific perspective, and to comprehend concrete legal phenomena by placing them within a general conceptual framework.

In the framework of law and economics theory, all law is regulation. All law are justified, criticised, and explained from the perspective of cost-benefit analysis, internalisation, externalisation, and often welfare maximisation. Similar is with the formalists. They attempt to understand all law from an internal legal perspective and within a given set of legal concepts, which include corrective and distributive justice, the public and private realms, and formal rights and remedies.

The critical theory of legal scholarship conceptualise law as power - domination, gender and racial inequality, and other constellations of power relations. Moreover, whatever lies outside the scope of the theory does not exist (for the theory). In short, the legal theory assumes the primacy of epistemology. What determines a legal phenomenon is the theoretical perspective through which it is observed. One chooses a perspective. Theoretical perspectives are only one possible way of approaching law (Lavi, 2011).

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the court. In the public-private partnership of nation-wide macromanagement (where the civil society participates in administration as much as the government) in India, a PIL (public interest litigation) is a weapon in the hands of members of the civil society whereby a public (social) interest litigation (PIL) is filed to seek and get a writ from either the High Court (under article – 226 of the Constitution of India) or the Supreme Court (under article – 32 of the Constitution of India).

Given this framework of plural and mixed framework of colonial and postcolonial positive laws and tiered structure of judiciary in the country, the legal governance has been oriented to impart a number of functions, for example, the establishment of the law and order as social conditions of conformity by citizens and law-enforcing agencies, institutionalization of the respect for law and maintenance of the rule of law (not merely the maintenance of the fundamental rights resting on the constitution but also arising from the ordinary laws), and resolution of the disputes and conflicts between citizens being subject to the jurisdiction of ordinary courts.

The legal administration and execution has been a powerful institution in the service of executing restraints, facilitating sanctions and imposing punishments for the whole morass of criminal and illegitimate activities of citizens, public officers and organizations in general in the country. In the history of regulation, oversight and officiating through the positive, plural and mixed framework of law and tiered structure of judiciary, the principal and overriding objectives of steering, managing and controlling the lives of citizens and workings of the institutions in the Indian society, polity and economy has been to secure justice and discharge exemplary rule of law related functions in the country.

Among all the functions that the positive law and judiciary impart, the attainment of social and economic justice and fairness is at the core in theory and practice. Justice is presently obtained by the governmental authorship of the legislations, ordinances and judicial doctrines (the case-laws) over the private domains of life of a citizen in the country. The juridical intervention is ever continuously required to correctly interpret these structures in consonance with the true spirit of the Constitution of India. While governing the nation through law and judiciary, the elected representatives of the state (the law-makers) and the multiple-tiered government agencies have been the proverbial impartial spectators, and the judicial hierarchy have been the proverbial impartial judges. The power of forcing conformity and abidance to law by the citizens that the legislations and judiciary had commanded has been an instrument of the good, effective and efficient governance that in turn, has also indirectly led to obtaining of distributive justice in general.

The positive, plural and mixed framework of the statutes, rules and regulations has rather been quite complex in India, as it has many structures, layers and pillars, and also a baggage of the colonial laws from the past. Such framework evokes the images of law making and enforcing agencies, institutions and organs of the sovereign, rule of law, and the resolution of conflicts and tyranny that aims at being either a means towards justice and/or an instrument of social control. The judicial courts at all levels of functioning in India have attempted to ensure fairness and in dealings and conduct in the service of justice over the years while dealing with the basic features, structure and intent of law. The machineries of the state and the judiciary at local, state and apex levels in the country have been involved in ensuring juridical justice in the form of redressal of grievances, and provisions of remedy, repatriation and retribution.

2. Legislations on Food, Employment and Child Welfare

In the services of attaining social and economic justice, and thereby, eliminating the ongoing harms and injustices, a whole edifies of governance through the institution of law in India has specifically been in the arena of food, employment and child care and protective welfare to all the needy and deserving citizenry. As a colonial baggage, there used to exist the official notification, circulars and bureaucratic rules that have facilitated the distribution of food in times of scarcities created by the natural hazard and disaster (prominently the famines in the colonial times). There has hardly been however any law and legislation to assure the guarantee of food to the hungry and destitute on a mass scale. The political party manifesto, the election campaign agenda and the popular public demand has often persuaded the Parliament and State Assemblies to enact laws on meeting the vital needs of people through the public provision of free and subsidized food, assurance of guaranteed employment and care and welfare of children under government supervision. Following the partition of the country in 1947, there cropped up an unprecedented problem of refugee settlement and meeting the huge demands for food and other essential commodities. The essential commodities act was therefore passed in 1955, and it came

7 Being a democracy and that also a constitutional one, India has offered the formal freedom and formal equality before the law to its citizens. In addition to constitutional-ethical guarantees of the promotion of common goods and socio-economic welfare policies, the elected representatives of people have kept the doors of bureaucracy, police and judicial courts open to citizens for seeking justice through administrative and legal routes.

8 These Articles of the Directive Principles of State Policy (DPSP) set the public ethics and constitutional ethics, and these ought to be referred in elaboration of the fundamental rights. The National Human Rights Commission has quite often in the past appealed to the apex judicial court to take cognizance of the guidance of the constitutional ethics in evolving the positive law (judge-made law).
came into the force. It was however after long time in 2001 that the public distribution system (Order) was issued. The public order was contained in the extra-ordinary part two, section 3 (1) of the Gazette of India, issued by the ministry of food and public distribution. Certain modifications were later made in the essential commodities act, 1955, by suppressing some provisions of the public distribution system (control) order, 2001. These two legal provisions do form the core of legislative backing to the public provisions of food to the citizenry in the country.

While all such legislations came into force, a number of grievances related to food distribution came on the surface, subsequently. The civil society organizations have been at the forefront of bringing into light the deficiencies in the public distribution of food among the needy and deserving citizenry. Quite belatedly but finally, the national food security act9 was passed in 2013 by the Indian parliament. The national food security act was notified by the ministry of law and justice in the Gazette of India. Under section 39(1) of the legislation, the provision was allowed that the central government might, in consultation with the state government, and by notifications, make further rules in the future to carry out the provisions of the law. Under section 40 of the Act, the state government was allowed to issue notification (consistent with the Act and the rules made by the central government) and to make additional rules to carry out the provisions of the legislation from time to time.

It is for long time that the public ethics and individual morality has been recommending, prescribing and justifying the dictum that no citizen ought to go hungry and sleep without food, no adult ought to remain idle and without productive work to pursue if he/she is willing to work and is in need of earning livelihood, and no child ought to remain unprotected, insecure and vulnerable to illiteracy, ill health and infant mortality in the country. Correspondingly, the democratic welfarist political economy policies have created the nation-wide provisions for food, employment and child protection to the vulnerable needy sections of the society with expenditures from the public exchequer from time to time.

Decades of ethical discourse and economic administration of sensitization and provisioning of these public goods and services, the achievements have been sporadic, less than desirable and often falling short of the requirements and needs of the citizenry. It is for such reasons that almost swayed over by the popular public demands, the idea of framing rules and regulations and enacting legislations has been in the spirit of creating claims, entitlements and legal rights to food, employment and child welfare, and such rights have been created rather late in the country.

As a pro-active event and doing, the legislation by the institutions of the state and the government was an indirect result of the pressures exerted by the civil society organization10. The legislation on food security and the addition of further rules have been at the service of instituting food justice under the institution of positive law in the country. The content of the legislation on food security for the citizens was to the effect of ensuring the access to, availability of and public distribution of free and subsidized food items among poor, needy and nutritionally deficient population of the country. The preamble to the Act reads:

“to provide for food and nutritional security in human life cycle approach by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto”.

After two years, the targeted public distribution system (control) order was promulgated in 2015. The purpose was to target on the deserving beneficiaries in the population – those living life below the poverty line. Most of the provisions in this order were for the sake of implementing the food security law. On the issue of food entitlement under the law, there were at least four rules

9It was a classic example of how public ethics were resurrected and under compulsion a corresponding positive law came into being. A public interest litigation (PIL) was filed by a third party, the Peoples Union of Civil Liberties of Rajasthan, in the year 2001. It was within the framework of law, force of law and the law in force, as defined by the Article – 13 of the constitution of India, and using the provision of Article – 32 (1) to file a writ petition in the Supreme Court. Before the PIL of the PUCL could succeed in the court and before the voice of the NHRC on DPSP as the constitutional public ethics could be given heed, the Parliament passed the National Food Security Act in 2013. The statutory law was made to create the road to justice for the hungry and malnourished before the judge-made law or public ethics could take care of it over the twelve year period – 2001 to 2013. In February 2017 (after sixteen long years), all such petitions in the form of PIL were disposed of and dismissed as nothing in the petitions “survive”, and therefore, the Supreme Court was not “inclined to further continue with these matters” in view of the NFS Act, 2013.

10 The Peoples Union of Civil Liberties of Rajasthan submitted to the Court, and claimed that Article – 21 on the Fundamental Rights to Life (which includes the right to live with dignity and also the right to die with dignity, and therefore, the right to food, nutrition, and the means of livelihood) has been breached by the State governments and the Union government. It was recorded as “PUCL versus the Union of India and others, Writ petition (Civil) 196 of 2001”.

Along with the petition of 2001 by the Peoples Union of Civil Liberties of Rajasthan, the special leave petitions and the contempt petitions were filed henceforth onwards. Subsequent to the PUCL filing a PIL (public interest litigation), the National Human Rights Commission (NHRC) in Proceedings of a hearing in January 2003, reminded the State of its moral and ethical obligations: the Constitutional Article - 21 ought to be read with Article – 39 (a) on “adequate means of livelihood” and Article – 47 on the “level of nutrition and the standard of living... improvement of public health”.
further added subsequently. Those were, first, the provisioning of funds to state governments for short supply of food grains rules, 2014, second, the food security allowance rule, 2015, third, the food security (assistance to state government) rule, 2015, and fourth, the cash transfer of food subsidy rule, 2015.

Under the legislative provisions of the cash transfer of food subsidy rule, 2015\(^{11}\), there were six aims: (1) to facilitate physical movement of food grains, (2) to provide greater autonomy to beneficiaries to choose their consumption basket, (3) to enhance dietary diet dietary diversity, (4) to reduce leakages, (5) to facilitate better targeting and (6) to promote financial inclusion. Under the food security allowance rules, 2015, the provision was made that in case of non-supply of the entitled quantities of food grains and meals to the entitled persons, such persons were entitled to receive the food security allowance from the concerned state government. The state governments were made a party to pay to each person within a stipulated time frame and in a manner that was to be prescribed by the central government. These three legislations were aimed at making the legal right to food security as comprehensive as possible.

Under the legislation, a division of work was promulgated to the effect of making the task of identification of deserving beneficiaries to be accomplished by the government of a state and a union territory. In some of the Union Territories of the country, the provision of direct cash transfer in food was started. In the union territories of Chandigarh and Pondicherry, it was begun from the month of September 2015, and in part of Dadra and Nagar Haveli, the same was begun from March 2016. In these union territories, the food security law has been implemented in cash transfer mode under which cash equivalent of subsidy has been transferred directly into the bank accounts of eligible households so as to enable them to purchase food-grains from open market. The eldest woman of the household of age eighteen or above was mandated to be considered the head of the household for the purpose of issuing of (food) ration cards under the law.

With regard to the labour employment, there have been various principles that have been applied to the exercise of formulation of a variety of labour legislations in India. These principles have been one of regulation, protection, welfare, social security, social justice, economic development, and that of meeting the international obligations. These principles have assisted in the evolution of both labour policy as well as drafting of legislations from time to time, and these have been in response to the specific needs of the changing economic situations in the country.

The purpose has been to make the policy befitting to the requirements of not only employer-producers but also to keep in line with the pace of economic development and the popular demands for the social justice. It has equally been the objectives of maintaining peace and promoting the welfare of labour that has gone into the making of labour laws. In the changing political regimes, there have been two main principles that have however remained consistent, namely, social justice and social equity.

......... Indian labour law has been explicitly formulated to put into practice the vision of social justice articulated in the Constitution of India – in particular The Directive Principles of State Policy. These principles obligate the state to apply certain principles while making laws that ensure ‘social justice’. With specific regard to labour legislation and policy, a sample of some of the principles that the state is encouraged to follow include securing the right to adequate means of livelihood, right to work, a living wage and conditions of work ensuring a decent standard of life (Singh, 2003, p. 123)

As per the constitutional law, the subject of labour is a concurrent subject. It implies that both the central as well as the state governments are competent to legislate on labour matters and administer the same. There have been constitutional laws to safeguard the social and economic interest and the entitlements of workers in the country. In keeping in line with the fundamental rights of the citizens and the directive principles of the state policy, the relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in such articles as of article 16, article 19, article 23 and article 24 in chapter 3 and article 39, article 41, article 42, article 43, and article 54 in chapter 4 of the constitution of the country.

In response to such constitutional laws, the Indian parliament has attempted to elaborate the spirit through a multiple of separate legislations from time to time. Among the various laws and acts, the minimum wages act, 1948, the factories act, 1948, the maternity benefit act, 1961, the equal remuneration act, 1976, the bonded labour system abolition act, 1976, the dangerous machines regulation act, 1983, and the unorganized workers social security act 2008 are notable ones that have relations with the welfare of labour and the employment of labour. All these legislations as significant pieces of the positive law were however not very helpful in guaranteeing the assured employment of rural labour. A special comprehensive legislation was however needed. Mahatma Gandhi National Rural Employment Guarantee Act (NREGA) was passed in the year 2005 in the Parliament. This was a legislation to provide livelihood security and democratic empowerment to at least the rural labourers in the countryside. In 2006, the Act was notified in 200 districts of the country in the first phase and then an additional 130 districts were brought under it in

\(^{11}\)To guarantee the implementation of a positive law, in August 2019, a further PIL (public interest litigation) was filed by three social activists in the court with the plea to issue writ to open the community kitchens so as to combat hunger and malnutrition. Come the Pandemic of Covid 19 – Corona virus - in late 2019 and its spread in March 2020 onward in India, a number of PILs were filed in the courts related with disaster-related public fund, migrant labour, employment and food provision to poor, destitute and vulnerable migrants trapped in the wake of “21-days long lockout” (extended further to 19-days lockout) in the country.
the year of 2008. The national rural employment guarantee act was a legislative public action in the direction of following the ethical recommendations of the directive principles of state policy. The fundamental rights enshrined in article 16 of the constitution of India has guaranteed equal access to opportunity in matters of public employment and prevent the state from discriminating against anyone in matters of employment on the grounds of religion, race, caste, sex, decent, place of birth, place of residence or any of them.

The legislation on the legal right to employment by providing a right to work has been consistent with article 41 that has directed the state to secure to all citizens the right to vote. The statute has also sought to protect the environment through rural works which has been consistent with article 48(A) which directs the state to protect the environment. In accordance with the article 21 of the Constitution that guarantees the right to life with dignity to every citizen, this act has imparted the dignity to the rural people through an assurance of livelihood security. This legislation has made the productive work and gainful employment as a matter of the legal right, claim and entitlement.

The legislation has also followed the article 46 that has required the state to promote the interests of and work for the economics upliftment of the scheduled caste and schedule tribes and their protection from the outright discrimination and exploitation. The article 40 mandates the state to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The law further enforces the process of decentralization initiated by 73rd amendment to the Constitution of India that granted a constitutional status to the panchayats.

Be that as it may. It was made mandatory that the wage employment must be provided within 15 days of the date of application by a worker seeking work. The mandate of the act was to provide at least hundred days of the guaranteed wage-employment in a financial year to all day-workers of every household whose adult members has volunteered to do the unskilled manual work. The unemployment allowance must be paid if the work is not provided within the statutory limit of 15 days.

The rules and regulations have provided for both cash payment and payment in grains to the worker. It has set a minimum limit to the wage-material ratio as 60:40. The provision of accredited engineers, work site facilities and a weekly report on work site is also mandated by the act. The act sets the minimum limit to the wages to be paid with gender equality, either on a time rate basis or on a piece rate basis. The states are required to evolve a set of norms for the measurement of walks and schedule of rates. The law stipulates the gram panchayats to have a single bank account. To ensure public accountability through public vigilance, the legislation designated the social audits as key to its implementation.

The central and the state government were supposed to cooperate in implementation of the economic and financial programme. This is a universal scheme for the whole country. In 2012, the operational guidelines of the national rural employment guarantee act was passed. The government has increased the number of guaranteed days of employment to 150 days for rain hit areas. The work entitlement of 120 days per household per year was allowed to be shared between different adult members of the same household. Principal areas of seeking work have been in the water conservation and water harvesting, growth roofing including airport station, irrigation works, restoration of traditional water bodies, land development, flood control, rural connectivity and the other works as notified by the government from time to time.

There has been a provision for the evaluation of outcomes. The law requires the management of data and men, and the maintenance of the records, that is, the registers related to employment job cards, assets, muster rolls and complaints. Such records are to be maintained by the implementing agencies at the village, block and state level. The act recommends establishment of technical resource support groups at district, state and central level and active use of information technology and a MG-NREGA website. The law allows convergence of this legislation with other programs. As it intended to create additional employment, the convergence has not been allowed to affect employment provided by other programmes.

There have been legislations on the care and welfare of children as well. A set of multiple laws forms the reservoir on the subject in the country. This reservoir has an origin in the colonial history of framing and enacting legislations. With a colonial baggage of legislations on securing justice for children, there are at present more than two hundred statutes that have variously dealt with children, including the children act of 1960 and the criminal procedure code, 1973. There had been a history of juvenile justice system, which is traced back to the British Era. In laying down the juvenile justice system, the apprentice act of 1850 was the pioneer.

The system gained momentum with the enactment of Indian penal code in 1860 and reformatory school act in 1876 (later amended in 1897). There was the Indian evidence act, 1872, that also formed part of the juvenile justice system. The reformatory schools act was considered to be the landmark legislation, which led subsequently to the enactment of the madras children act in 1920, the Bengal children act in 1922 and the Bombay children act in 1924. There were children pledging of labour act enacted in 1933 which prohibited the placing of the labour of children.

The child labour prohibition and regulation act were passed in 1986 which prohibited the engagement of children in certain categories of employment and also regulated the conditions of work of children in certain other categories of employment. The immoral traffic prevention act was passed in 1987, which sought to stop the trafficking in young persons, both boys and girls. Later, the country has ratified the United Nations convention on the rights of the children in 1992. The colonial juvenile justice
system was improved to suit the changed social and economic condition in the country. The juvenile justice care and protection of children act was passed in the year of 2000. The act was amended twice in 2006 and 2011 to bring in more clarity.

In the course of evolution, the new juvenile justice care and protection of children act was passed in 2015 in the country. Under this statutory act, the law began to distinguish two categories of children, namely, the juveniles in conflict with law and the children in need of care and protection. In the year of 2006, the prohibition of child marriages act was passed. In 2012, the protection of children from sexual offenses act was passed. The Act has been amended in August 2019. The legislation has been serving the purpose of protecting the children from adult abusers.

With a plethora of legislation as the backdrop, it was the 86th amendment of the Constitution in 2002 that made the free education of children as a fundamental right. It allowed the insertion of the article – 21 (A) in the Constitution of India so as to provide free and compulsory education for all children in the age group of 6 to 14 years as a fundamental right. With such a Constitutional amendment, every child has a fundamental right to full time elementary education of satisfactory and equitable quality in a formal school. The Parliament passed the right of children to free and compulsory education act in 2009. The legislation for free and compulsory education to all children of the age of 6 to 14 years was extended to whole of India except the state of Jammu and Kashmir.

With reference to the constitution of the country, the article 38 of section number 3 states that every rule made under this act and every notification issued under section 28 and section 23 by the central government would be laid, as soon as maybe after it is made, before each house of parliament while it is in session for a total period of 30 days. Every rule or notification made by the state government under this act shall be laid, as soon as maybe after it is made, before the state legislature. The enforcement of the article 21 (A) and the right to education legislation came into effect since April 2010.

Such constitutional law and the law of the legislature made it possible for every child of age of 6 to 14 years to be entitled the right to free and compulsory education in a neighbourhood school till completion of elementary education. Under this act there are no school fees, capitation fees, charges or expenses to be paid by child to get elementary education. Each child is also entitled to free textbooks writing materials and uniforms. The law made it obligatory for the appropriate government and the local authority to establish a school within the neighbourhood within a period of three years from the commencement of this legislation.

Both the central government and the state governments have concurrent responsibility of arranging and mobilising monetary funds for carrying out the provisions of this act. The central government was given the responsibility to prepare a national academic curriculum, teacher training manuals, capacity building and technical support to the states for the promotion of the right to education of children in the country. Recent development has been as such that a draft national child protection policy was issued by the ministry of women and child development in the year of 2019.

3. Analysis of Impact of Law on Behaviour and Conduct

An economic agent is responsive to the incentives and disincentives of the free market in production and consumption of goods, money and market. A moral agent is reactive to the power of human reasoning and values of culture and society and attempts to follow the normative justifications and recommendations by avoiding the weaknesses of the will. A law abiding citizen is however open to both the persuading vigour of social norms as well as the coercive force of the punitive dictates of customary, traditional and positive law and the law enforcing agencies, including judiciary.

In being responsive, the able-bodied, sane adult and responsible citizens who are presumed to be rational do weigh the pros and cons, costs and benefits, profits and losses, incentives and disincentives, rewards and sanctions, and awards and punishments. Such a weighing and judgements are the basis of the compliance or otherwise violations of the principles of the market and public regulations of political economy, the recommendations and justifications of public ethics and the coercion and punishments of positive law. It is to avoid the moral blame and social banishment, steer clear of the risks of exit from the market and charges of rent-seeking, and to evade the monetary penalty and physical punishments of confinement in jails that the rational and reasonable citizens do sincerely comply with, abide by and confirm to the persuasions and imperatives of morality and ethics, the principles and dictates of the political economy, and the forces and coercions of the positive law.

It is claimed that in the course of governing process in which both government functionaries as well as the civil society private actors do participate, the individuals orient their comportment towards ethical ones, economic ones and legitimate ones after weighing the costs and benefits. The governing institutional structures of the prevalent public ethics, political economy and positive law of the land do cross each other. Each governing sphere has its own respective character, content and conditions of application in persuading, compelling and coercing individual preferences, manners and conduct. While the ethical and legitimate manners are mostly in the nature of fair and just ones, the economic deeds is mostly oriented towards utility and profits of efficiency. While the moral demeanour is a product of persuasive power of the ethics, the legitimate comportment is the outcome of coercive and sanctions power of the law. It is theoretically claimed that governance through these institutional structures does bring about a change in the behaviour and conduct of individual citizen.
While the ethics and morality\(^1\)\(^2\) have motivational force of recommendation, justification and persuasion in rational discourse and the economics and political economy work through the signalling of market incentives and disincentives of pecuniary, material and monetary nature, the positive law stands apart as it has coercive force of punitive action and punishment to the extent of confinement in prisons that creates the much stronger and decisive mechanism of influencing the preferences, choices and conducts of the citizenry. While law\(^3\), ethics and economics do influence the human behaviour towards desirable ones, their respective capacity to deter and dissuade the individual from the undesirable conducts does vary to a great extent.

While the law signals to the delinquent individual citizen the coercion of threat of sanctions and physical confinement in secluded jails (and even ending the biological life of individuals, that is, the capital punishments), the economy and market do merely impose the material and financial losses on the individuals and the ethics do merely recommend social banishment and guilt feeling of blameworthiness on the delinquent individuals. The political economy exercise of the government impacts the behaviour and conduct of free economic agents rather indirectly and that too not very decisively. The public ethics impacts the behaviour and conduct through creation of an ethos of inspiration, motivation and stimulus but rather faintly and inadequately in comparison to the material pulls and incentives of commodities, money and market.

The legal system and law enforcing agencies of police, bureaucracy and judiciary impacts the behaviour and conduct rather directly, decisively and forcefully. The positive law\(^4\) as an instrument and institution of the national administration and control does produce decisive outcomes and consequences in the lives of the able-bodied firm and sane adult individuals. The most powerful and decisive impact on bringing about a change in the attitude, preference and conduct of individual citizen is that of governance through the coercive and punishing institution of the positive law, judiciary and legal system in the country. The violations of law have of course much greater coercive and frightening force than either the violations of morality or the economic principles.

Theoretically speaking, what a positive law ‘is’ or a law ‘does’ is the descriptive law\(^5\), and what a law ‘should do’ or a law ‘should be’ is a normative law. An assessment of what a law ‘has done’ is the evaluative law. Classically, a law is presumed

\[^{12}\] Jurisprudence has re-emerged with honor and prestige since 1960s. It involves the study of general theoretical questions about the nature of laws and legal system, the social nature of law, and the relationship of law to justice and morality. The positivist mode of thought insists that once the rule of law has been laid down and determined, it does not cease to be the law because it can be shown to be in conflict with morality. Though it is a fact that even the positivists do not deny that many factors, including morality, do concur in the development of a legal rule, and where there is possible choice in adjudication, the moral and other considerations may induce the arrival to one decision rather than the other.

Hasns Kelsen was but one who banished any element of value judgments from the juristic study of law. A less rigid position was occupied by H L A Hart (1957) who considered law s rules for the guidance of the officials and citizens to act and by Joseph Raz (1979) who considered law as a system of norms providing a method of settling disputes authoritatively. It remains a fact that morality enters law as one of many considerations.

13 Frederick Hayek (1973; 1993) proposes the rules of just conduct and actions of persons towards other persons as a spontaneous order of actions in the same manner that market is a spontaneous order, independent of the desires and will of individuals and purposeful and intended actions. Hayek says that a spontaneous order is the regularity of processes of rule of just conduct emerges. The aim of the rules must be to facilitate that matching or tallying of the expectations on which the plans of the individuals depend for their success in any settlement of humans.

14 Beginning with the ancient origin of written, codified and formal law in the Babylonian Codes of Hammurabi in 1760 BC (sidelining the ancient Egyptian oral precepts), the Semitic tribal law of the Ten Commandments of Prophet Moses in the 13th century BC, the Great Rhetra (proclamation of the Oracle of Apollo at Delphi (Spartan Constitution) of Lycurgus in 9th century BC, the Athenian Commands of Solon in 6th century BC, the Law of the Twelve Tables of Roman jurists of 450 BC, and the Code of Justinian in 6th century AD in Byzantium empire, the contemporary society everywhere in the world has modern legal structure, legal infrastructure and written laws. A long journey of establishing courts of law, parliament and the constitution has been accomplished in every settled country to maintain order and dispense justice through the law and legitimate actions of citizens and public functionary.

15 The abstract and formal law is the study of permissible legitimate interactions among legal personae, and a study of behaviour, decisions and actions of the legal institutions of public agencies of governance – both civil society and government. It studies rewards and punishments associated with interactions among citizens and government functionaries.

The law is the study of how individuals and groups end-up interacting, with or without the use of an impartial spectator and judge, in minimising conflict and dispute, so as to maintain the rule of law, now and also in future, among all citizens and institutions of society. It is also the study of decisions and actions of institutions of legislature and judiciary and relations of legal persons and agencies of the government.
to change manners and conduct of individuals in the society. The law aims to reorient the people and the institutions in a country towards a choice to substitute one activity for another. The laws are effective because these are backed by the threat of punitive enforcement. The threat prompts individuals to make judgments about the risks of not obeying the law and the rewards of abiding by the law before deciding whether to engage in a legally prohibited activity, for example, the activity of harming and injuring others – manifest injustice. It is in the backdrop of such features of the positive law that it is claimed that it is the fear of sanctions and punishments that the force of the law carries that compels the citizens and public functionaries of the government to mould their respective demeanour and actions towards legitimate, legal and fair ones.

A legal comportment is premised on the idea that compliance is secured by the presence of the threat of sanctions that the law carries for the wrong-doers and the presence of formal policing and monitoring by the judiciary and the other organs of the State including the government. A legal behaviour is what fits within the law, and it is compliant with a legal framework. It limits one, and determines what one can do and cannot do according to the law. This is the direct impact of the coercive feature of the law. Much of the efficacy of the law however depends upon the agents and the authority of the legal system, which are involved in the enforcing the law in society, for example the working of the police, bureaucracy and courts. The positive law in a framework of the democratic welfare administration does apply uniformly to the general public as well as the public officials and government functionaries, however, the public officials and government functionaries have an additional obligation of enforcing the sanctions, force of coercion and penalties, in addition to being the law abiding and law complying agency themselves.

In addition, it is also the personal commitment of citizenry and public functionaries of the government towards law-abidance and conformity to the law that lead to changes in the etiquette and conduct of the citizens and public functionaries. For purpose of conformity with law and abidance by the rules, the hanging sword of fear of sanctions and punishments is not enough. The citizens and public functionaries are mostly morally and ethically motivated to alter their conduct and actions towards legitimate and legal ones. It is often opined that the set of legislations, administrative regulations and judicial doctrines ought to be in conformity to the natural laws of society and natural laws of economy if at all the positive public law (legislations) is to gain legitimacy as a system of rules among the members of civil society.

In other words, there is an indirect impact of the law on individual etiquette. The law changes the moral attitude by re-characterising the attitude which was previously thought as harmless. The law affects moral attitudes of citizens through the information campaigns and public debates. The compliance with law does stem at least as much, from personal commitment of individuals towards the law-abiding conduct. A legitimate behaviour leads individuals to follow the rules not because they agree with each specific rule, nor because they expect punishments, but because they accept that it is morally right to abide by the law. A legitimate demeanour is one which is approved by the existing positive law, and as such, the posture is often not harmful to others. It involves following a correct, fair, genuine, moral and ethical path.

To the extent that a legal system is perceived to be promoting justice, it is assumed that the people are more likely to comply with the law in an overarching sense. In general, when the law imposes obligations and punishments in concordance with the general institutions about justice, individuals are more likely to view the legal system as a legitimate and reliable source of morality. The perceived legitimacy of the law is however undercut and the compliance undermined, when the law fails to comport with citizen’s institutions of justice (Nadler, 2005). The legal actors, authorities and institutions that are perceived as legitimate are likely to prompt community members to perceive the actions of cooperation and compliance as moral imperatives (Tyler, 2006).

There is one more indirect route through which the law impacts the behaviour of individual citizen. The law has an impact on the economic conditions of individuals and households in the society. The law creates a binary of economic incentives of profits, benefits and rewards on the one hand and the economic disincentives of losses, costs and penalties. The compliance with law is often in anticipation of the economic rewards, while the violation of law results in economic losses. A rational economic agent makes a choice for the economic profits and rewards from the compliance with law.

It is now a core preoccupation of legal theorists and researchers in the academia to analyse the relation of public law with the securing and the furthering of the cause of justice in civil society. With the rise of public (positive) law, the rationale and

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16 To revisit the history, a universally acceptable of definition of law is quite difficult in view of the various schools of thought of jurisprudence that have approached law from diverse viewpoints and perspectives. H L A Hart (1957; 1960) does not define law. John Austin speaks of a science of law and jurisprudence but use mostly the description of philosophy of positive law. John Austin defined law as a command of the sovereign. The law is valid only if it is the command of the sovereign. Hans Kelsen (1941; 1945) also uses an approach of the philosophical character but claims to be developing a pure science of law. Hans Kelsen (1941) refuses to treat law as a command; rather he treats law as normative rules. As normative rules, the positive law is the only true law. According to the school of thought associated with the American realists in jurisprudence, law is not only a series of the command of the sovereign but also a body of the principles that have slowly evolved by the decisions of the judges over the years in the courts.
social purpose of the legislations have essentially been not only to establish order and system in society but also guaranteeing, securing and attaining justice, and all along, also influencing the attitude, stance and performance of the citizenry.

Whatever be the varying capacity of economy, ethics and law in dissuading and deterring individuals from adopting the undesirable and unjust course of actions, it is but also true that the individuals do not robotically adhere to, comply with and behave in accordance with the law, rules and regulations in public life. The doing (action) of justice and undoing (action) of injustices by individuals of the civil society and public official functionaries of the government (of the state, including the judiciary) depend less on the content and character and more on the practical enforcement of reward/punishment, incentive/disincentive and award/punishment by the enforcing agency.

The enforcing agency in the case of public ethics creates the public opinion and sensitization regarding right and wrong in the civil society. The moral deficits on the part of individuals are dealt through public shaming and social banishment. The enforcing agency of the market and government bureaucracy in the case of economics creates the economic reward and penalty. The economic failures of market signalling produce the outcome of pauperisation and economic misery for the individual participants. The enforcing agency of police, bureaucracy and judiciary as the organs of the coercive state in the case of positive law facilitates the award/punishment. The failure to abide by and confirm and comply with the law however culminates in physical confinement in prisons through prospects of jailing during the course of governance.

In the actual world beyond the academia, the approach and posturing of citizens, groups and communities does range from one of submissiveness to delinquency to outright rebellion, and these range of behaviour do exist despite the coercive power of positive law and its enforcing agencies. The positive law as a scribbling on paper, promising economic advantages and discouraging moral wrongs, does not guarantee a legal behaviour and a legitimate pretentiousness on the path of securing justice unless the citizens and the functionaries of the government abide by the law and orient their conduct and actions in the interactive setting towards legitimate, legal and fair ones.

> When from a particular conduct, the benefits or advantages are more than the disadvantages or sufferings to an individual; that individual can certainly be expected to opt for compliance, because the benefits (pleasures) of compliance outweigh the disadvantages (pains) of violation. The efficacy of law depends on its ability to deter at every level of operation (prescription (legislating), functional courts and enforcement mechanisms). A moral reaction to an immoral offence is neither prescribed by a moral order nor socially oriented. Its efficacy rests on voluntary obedience. While in the case of legal rules, such deterrence involves the fear of the application of force or coercive measure against the individual’s will; in the case of moral or ethical obedience, deterrence or loss of freedom takes the form of coercion in the psychological sense (Forji, 2010, p.86-7).

All in all, the fear of sanctions (punishments) and the desire for rewards (incentives, mostly pecuniary and economic) are however the most straightforward way that the law influences preferences, deportment and conduct of individual citizen and public functionary (as well as of the institution in civil society).

When the directive of law is violated and results in delinquency, it is often thought that either the law is bad or the delinquent is bad. In case, none is bad, it is the law implementing agencies and structure that is bad. A potential sufferer can then either retreat or rebel or ritualise or break the rules like the aggressor.

To the extent that those who are not moved by the ideals and moral values of self-disciplined abidance and conformity to the law and often acts with the belief that their foul actions would not be caught by the long hand of the law of the land, the law also does not succeed in changing their preference, behaviour and actions towards legitimate, legal and fair ones. The law can have moreover the unintended and even perverse effects, including the backlashes, as well.

Much depends upon the enforcement agencies and their working - that is, governance. It is in this respect that growth with justice may even lead to the injustices of development, if the governing through the rule of law is not carried out properly. To quote a perceptive remark:

> Concerns with issues of justice do not integrally inform of dominant rule of law narratives. At best, these are informed by wholly proceduralist, though not for that reason unimportant, notions about justice. My privileged reading of Indian constitutionalism suggests a distinctive conception wherein development is defined as that set and series of public policy measures under which the most impoverished Indian peoples benefit

17The effects of the rise of sovereign legislatures and that of majority-rule democracy have been as such that these have combined to turn law into a means for producing social “end-states” rather than general rules to guide individuals in the pursuit of their chosen purposes. Of course, there have been very serious difficulties for the classical lawyer in the question of the content of laws as prohibitions and authoritative procedures, and of the proper limits of public law (Barry, 1988).
disproportionately from development. On this score, the evolution of the practice of Indian rule of law must be said to have enhanced the injustice of development (Baxi, 2004, p329).

The concrete aspects of the relations of the Indian legislations on food, employment and child welfare and the changing conduct and actions of Indian citizenry and government functionaries are interesting. In view of the facts that moral and economic attitude, dispositions and conduct of a considerable mass of citizens could not be moulded towards concerns and respects for the fairness and justice – social and economic - in the developing national ethos of consumerism, materialism and market capitalism, and the aggregate ethical direction and economic management could not adequately guarantee the effective functioning of the institutions of fairness and justice in the political and economic ethos of ad-hoc and non- holistic socio-economic schemes, populist and piecemeal programmes, non-primacy of planning for the socialistic pattern of Indian society, the onus of achieving and obtaining equity and justice has disproportionately been on the shoulder of the governing institutions of law, law enforcing non-judicial agencies and the judiciary of India.

In the Indian society over the last seven decades, the national regulation and control through the structural pillar of law and the judiciary has more or less been successful in maintaining societal peace, social order and the aggregate dimensions of the rule of law. A culture of the rule of law has willy-nilly evolved to characterize the constitutional democratic setup in the country. Wherever and whenever the law of the land has been broken and violated, the doors of the judiciary have been knocked to get the writ in the petitions against such violations and breaches of the law.

The Indian judicial activism has also been significant and it has been successful in creating occasional exemplary episodes in enforcing the conformity with and abidance to the positive law in the country. In other words, the conformity to and compliance with the modern rules and regulations on the part of the citizenry and in the corridors of the bureaucracy (exception being some organizations and a few bureaucrats being charged with violations of the law and indulgence in the corrupt practices sometimes) has been claimed to have solidified as the standard practice in daily lived life.

It is but also arguable that the positive law as a set of legitimate social practices of attaining justice has however been a conundrum in the country. The plural positive law as a framework (all inherited social codes of civility and criminality, legislative statutes, judge-made law and administrative law) has often suffered from being occasionally vague in protecting the claims and rights of the needy citizens, and in many instances, being devoid of the requisite deterrence capacity, and therefore, being entailed with enforcement setback.

Quite a number of the provisions under the law have been often vague enough to create loopholes to be exploited by the violators of law. Its deterrence capacity has been on many occasions rather outweighed by corruption, financial and political prowess of the wrong-doers. Its enforcement setbacks have been grounded in lack of sensitization about obligations of citizens, coupled with scarce resources and paucity of implementing infrastructure and inefficient working of policing and judicial courts.

It has also been charged with recurrently failing to be instantly effective in producing the intended outcomes of protection of legitimate claims, maintenance of order and securing of justice. There have been weak legal structures in the country. The law-enforcing agencies have suffered from lure of potential benefits of the rent-seeking activities. The system of governance has been effective in discriminating against the excluded and effectively disenfranchising them from the political benefits of a democratic process. The verdicts of the courts in many cases have been long delayed everywhere in matter of the protection of rights of the harmed, injured and victims of injustices.

The number of litigations pending in the courts of law in the country however does tell us one fact: the delays in the redressal of perceived injustices bespeak of the level of inefficiency that has gripped the legal and judicial system of the country. Such delays often do encourage the action of trespassing the law rather than conforming with the law. A number of individuals who could have been incentivised to follow and show conformity with the law in their behaviour and conduct are often encouraged to be dismissive of the timely and potential punishments.

There are lot more that are required to be done in view of the facts that there are hundreds of laws which have become obsolete and redundant, and thus, these are required to be dropped, modified and updated. The Parliament has recently done the requisite while various State Assemblies have been lagging behind in this endeavour till date. There are at present merely about 650 judges in the High Courts and only 24,000 judges in the trial courts to address these pending cases. There are just 2277 Taluka level legal services committee, 670 district legal services authorities, 39 High Court legal services committee, 36 State legal services authorities, and one Supreme Court legal services committee, which are dispensing the legal services in the country as per the “Statistical Snapshot 2020”, published by the National Legal Services Authority. Such a deficiency do not invoke much fear about the instant actions of the law and judiciary, and rather dent in the evolution of attitude and stance in conformity with law of the land.

There have been problems with regard to shortages of functionaries and infrastructure that are required to facilitate the legal processes and securing of justice in time. Such deficiency creates a feeling that one can get out of the clutches of law for long time, and thus, encourages delinquency rather than conformity with law. With regard to the workforce employed in the legal services institutions, there are 44,673 staffs employed in district courts and 3,704 staffs employed in High Courts in the country.
In sum, there are as meagre as 27,327 panel lawyers, and 49,285 para-legal volunteers in the country. There have been in total 13,459 legal services clinics, which comprise of 891 legal services clinics in the courts, 870 legal clinics in the law colleges and universities, 104 legal clinics for the people of the Northeast, 1,134 legal clinics in the jails, 1,117 legal clinics in the community centres, and 6,215 legal clinics in the villages - operating in the country as on 31 December 2020. There have been 1464 front offices at the district taluka level throughout the country that has provided legal assistance to merely 1,46,358 people.

With regard to the verdicts and awards of punishments made by the lok adalats, just about 47,00.00 cases were disposed off in the national lok adalat which included about 21,00,00 pending cases and 26,00,00 litigation case in 2018. A major drawback of the lok adalat is that if the parties do not arrive at any compromise and settlement, the parties are advised to seek a remedy in a court of law. This causes unnecessary delay in the dispensation of justice. Moreover, the jurisdiction of lok adalat with respect to the criminal disputes has been rather limited to those offences which are compoundable under the law. The consequence is that the crimes such as that of petty theft and other small crimes are out of the purview of lok adalats (people’s courts) in the country.

The public interest litigation (to borrow the phrase by Upendra Baxi ‘social action litigation’) has been an exemplary episode of judge-led, judge-induced activism. Much hope was fixated upon it. To quote the various pages from an authoritative article:

*The Supreme Court of India is at long last becoming, after thirty two years of the Republic, ........... being identified by justices as well as people as the “last resort for the oppressed and the bewildered” .......... People now know that the Court has constitutional power of intervention, which can be invoked to ameliorate their miseries arising from repression, governmental lawlessness and administrative deviance .......... a new kind of lawyering and a novel kind of judging .......... the medium through which all this has happened, and is happening, is social action litigation, a distinctive by-product of the catharsis of the 1975-1976 Emergency ........... Justices of the Supreme Court, notably Justices Krishna Iyer and Bhagwati, began converting much of constitutional litigation into SAL, through a variety of techniques of juristic activism .......... This expanding right was soon to encompass within itself the right to bail; the right to speedy trial, the right to dignified treatment in custodial institutions, the right to privacy, and the right to legal services to the poor ...... Of about seventy-five SAL writings between 19801982 a preponderant number were filed by social activists rather than by individual lawyers or lawyer groups (Baxi, 1985, pp.107-18)*

On the way to institutionalizing a decentralized dispute redressal system, the idea of the nyaya panchayat (justice dispensing assembly) has been innovative one. It was the idea of a dispute redressal system with a clear focus on mediation, conciliation and compromise is institutionalized system. However important point to note was that states of Andhra Pradesh, Gujarat, Haryana and Karnataka made no provisions for the panchayats though they had the provisions in the earlier laws. It is relevant to note that apart from the states which already had a system of nyaya panchayat at the time of adoption of the Constitution for example Madras, Mysore and Kerala, only a few states like Madhya Pradesh and Uttar Pradesh implemented article 50 upon the adoption of the constitution by creating separate nyaya panchayats.

The adjudication so far either is by way of compromise or on measures by these panchayats having rarely seen challenges before the law courts. As distinguished from both Himachal and Punjab, the Bihar Panchayati Raj act 2006 did provide the opportunity of direct election of members as a mechanism for the constitution of Gram Kacheri, and kept the same as separate body and insulated from the gram Panchayat. The Bihar model did differ from the Himachal Pradesh and Punjab model only to the extent that it provided a judicial body, which was separate from the executive body, and thus, it was in accord with the mandate expressed in the article - 50 of the Constitution of India. It is interesting to note that the Bihar model of directly elected gram Kacheri has been the closest to the model of directly elected Nyaya Panchayat provided under the Nyaya Panchayat bill of 2009. More recently the state of Bihar has also notified Bihar gram Kacheri conduct rules 2007 under the Bihar Panchayati Raj act 2006. Alas. The Nyaya Panchayat Bill of 2009 has not been converted into an act till date.

The delays in the redressal of perceived injustices bespeak of the level of inefficiency but also that of insufficiency of the judicial institutions in the country. It is an alarming figure that there are almost forty million cases pending in the trial courts. According to the India Justice Report of 2019, published by the Tata Trusts, the legal recourse to justice is still inaccessible to most of the Indians. There are 2.3 million cases pending for more than 10 years. There are 2.8 million cases pending in the Indian subordinate courts. While there have been nearly 4.2 million civil cases and 1.6 million criminal cases that are pending in the High Courts in India in 2022, nearly 76 percent of the inmates in jails are under-trials because of pendency.

On an average, the cases are pending for 30 years in the trial courts while these are pending for almost 10 to 15 years at the High Court level. It takes an average of 9.5 years to process a case in a subordinate court in Gujarat. One legal services clinic attends to 1603 villages in Uttar Pradesh. Some of the prisons in the country are filled beyond the capacity. Only one out of three prisoners has been convicted of a crime. Of course the justice delivery system has been affected by pendency and delays in finalization of cases and appeals of the litigants and convicts under trials.

A crucial point is that there have been a number of “perceived” instances of injustices that move the litigants to knock the doors of the court. Those are but only the final verdicts that establish the actual and real instances of injustices in the country that are
finally undone - resituated, repatriated and retributed. It is therefore that the number of litigations by individuals, organizations and public entities do not at all reflect and measure the number of instances of continuing injustices.

In such a situation, the impact of positive law in changing the comportment and conduct of the citizenry and government functionaries has been mixed. While there have been a majority of responsible citizens abiding by the law, a minority of corrupt, delinquent and criminals have not changed their demeanour and stance in anticipation of the ultimate sword of punishments under the law.

Concluding Remarks

India has a plural and mixed framework of positive law and a tiered structure of judiciary in the country. The positive, plural and mixed framework of the statutes, rules and regulations has rather been quite complex, as it has many structures, layers and pillars, and also a baggage of the colonial laws from the past. In the course of administering and managing through law and judiciary in India, one of the most distinctive elements has been the provision of social interest litigation. Among all the functions that the positive law and judiciary impart, the attainment of social and economic justice and fairness has been at the core in theory and practice.

It is claimed that in the course of governing process in which both government functionaries as well as the civil society private actors do participate, the individuals orient their pomposity towards ethical ones, economic ones and legitimate ones. The most powerful and decisive impact on bringing about a change in the manner, preference and conduct of individual citizen is however that of governance through the coercive and punishing institution of the positive law, judiciary and legal system in the country. It is the personal commitment of citizenry and public functionaries of the government towards law-abidance and conformity to the law that lead to changes in the outlook and conduct of the citizens and public functionaries. The public officials and government functionaries have an additional obligation of enforcing the sanctions, force of coercion and penalties, in addition to being the law abiding and law complying agency themselves.

In the course of attainment of justice that is entangled with the governance through operations of law and judiciary, the tragedy has been to the effect that while the laws have been framed and enacted, the implementation has often been non-uniform, delayed and often rather ineffective. The verdicts of the courts in many cases have been long delayed everywhere in matter of the protection of rights of the harmed, injured and victims of injustices. There have been weak legal structures in the country. The law-enforcing agencies have suffered from lure of potential benefits of the rent-seeking activities. It has also been charged with recurrently failing to be instantly effective in producing the intended outcomes of protection of legitimate claims, maintenance of order and securing of justice.

The conformity to law has not been universal, and often the doers of injustices have benefited from the loopholes of the law. Given the insufficient manpower in judiciary and the delays in verdicts thereby, the violators of law and actors of injustices related to access to food, employment and protection of children from injuries and harms have often got encouraged to evade the clutches of law. The system of administration has been effective in discriminating against the excluded and effectively disenfranchising them from the political benefits of a democratic process. The coercive arm of the law and its enforcement through public and private agencies has not pervaded e very nook and corner of the country. To quote:

The judicial system in most South Asian countries denies the excluded elementary justice because of their poverty as well as the social bias of most South Asian judiciaries ......... In such a social universe, the excluded of South Asia remain tyrannised by state as well as by money power and have to seek the protection of their oppressors, within a system of patron-client relationships, which perpetuates the prevailing hierarchies of power.......... Representative institutions tend to be monopolised by the affluent and socially powerful, which then use their electoral office to enhance their wealth and thereby perpetuates their hold over power .......... This lack of an appropriate political response to the voices of the excluded reflects a form of political market failure in South Asia (Sobhan, 2010, pp. 8-9).

In such a circumstance, the individual civil and social posture and public legitimate conduct has many a time come under the strains of individual anti-social reasoning and deviant deliberations, and also got negatively affected by society-wide ethos of costly legal remedies, delays in court verdicts, and camouflaged plural law system. India’s formal justice delivery system has for far too long grappled with outdated legal frameworks, inadequate resources, poor oversight and management and serious issues of quality. The absence of a structural and substantive reform in the institutions of the justice system-among them the police, prisons, judiciary and legal aid is inexorably leading towards a breakdown of the rule of law and wearing away of the public faith in governance and the justice system.
References:

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