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*Equality before the law*E
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A glorified myth

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In some cases, the laws themselves are discriminatory while in others their applications are.

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Poor people hardly get the protection of law; rather they are mostly discriminated against. Solon lamented, "Laws are like spiders' webs: If some poor weak creature come up against them, it is caught; but a big one can break through and get away." Oliver Goldsmith was equally pungent: "Laws grind the poor, and rich men rule the law."

The imprisonment of one year inflicted on Ketan Parekh and Hiten Dalal by a special court in Mumbai for defalcating Rs 47 crore from a private bank and investing it in shares reinforces the notion that laws discriminate against the poor. The decision has raised serious questions about the existing penal laws as well as the sentencing policy.

Another accused has been awarded only six months of jail keeping in view his old age. They have been convicted under various sections of the Indian Penal Code—403 (criminal misappropriation), 405 (criminal breach of trust) and 420 (cheating). Under these sections, minimum punishment is not prescribed whereas maximum punishments are three years in jail under 403 and seven years under 420. Every criminal misappropriation involves criminal breach of trust and also cheating. But since the minimum punishment is not prescribed the accused have been awarded the punishment of just one year in jail.

Contrast this decision with the Supreme Court's judgments in a catena of cases under labour law in which the court has ruled in favour of the management saying they are free to sack a labourer if he misappropriates even a meagre amount on the ground that the management has lost faith in him. Sreerangyee and Maragatham cases illustrate how heartless and apathetic our criminal justice administration is towards the poor.

In Sreerangyee case, the accused woman is affected by a saga of misfortunes dogged by hardship that knows no bounds. Deserted by her husband, she made all efforts to earn a living to support her five minor children and herself. Her penurious condition worsened further when her youngest child became seriously ill, and she failed to raise the money for her treatment despite best of efforts.

With no ray of hope, she killed all her five children by throwing them into the well and then she herself jumped into it. But misfortune did not leave her even then and she was rescued only to be prosecuted and finally convicted under section 302 of the Indian Penal Code for murdering her children. The High Court re-

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fused to accept poverty as an excuse for murdering her children and attempting to commit suicide.

Similarly, in Maragatham case, the accused, husband and wife, having failed to get either work or alms, starved for almost ten days, and then decided to end their lives along with their one and a half months old girl child. The two tied themselves with a rope along with the infant and jumped into a well.

Here again ill luck pursued them, and the child slipped while jumping and the two accused were saved by a passerby. They were also convicted for attempt to murder their child under section 307 read with section 34 of the IPC and under section 309 for attempt to commit suicide.

One wonders whether it is criminal justice administration or criminal administration of justice. The state does not protect the poor's fundamental right to life, fails to give them employment, and yet punishes them for ending or attempting to end their lives along with their children's. The state just prolongs their death as anyway they would have died without food after some days.

Starvation deaths do not shock the conscience of the state but cutting the painful journey to death short is severely punished.

Besides such unjust laws, the victims of which are the marginalised people, the applications of laws in general are discriminatory. There can be a rule of law only when laws are applied uniformly, and it is rooted firmly in the interrelated notions of neutrality, uniformity and predictability.

Judges are under an obligation to enforce laws without any discrimination. Instances galore which testify to discriminatory application of laws. Judge Cadena referred to the case of a Houston policeman who was awarded two years' probation for pleading guilty to possession of 76 pounds of marijuana though a San Antonio youth was sentenced to 25 years in jail for possession of 16 marijuana cigarettes.

Similarly, Indians were treated shabbily at the hands of the British in the garb of law. An Indian was sentenced to three weeks of hard labour because he defended himself when some dogs, owned by an Englishman, attacked him.

After suffering so much of humiliation and injustice, the founding fathers of our Constitution gave pride of place to justice. Some of the essential prerequisites for ensuring justice to all and sundry are the equality before the law, the independence of the judiciary and the absence of arbitrary powers. Therefore, equality before the law and equal protection of the law to all citizens is the most fundamental right enshrined in the constitution.

"Justice", defined Dante, "is a certain straightness or rule, rejecting the oblique on either side". But the recent trends show that the status of the accused weighs more heavily than the provisions of law.

(In some cases, the laws themselves are discriminatory while in others their applications are. The net result is that the poor suffer. The magniloquent principle of equality before law and equal protection of law has failed, to a great extent, to animate and pulsate our society.)