Equality before the law

A glorified myth

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BY SUDHANSHU RANJAN

Poor people hardly get the protec-
tion of law; rather they are most-
ly 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
Dalai by a special court in Mumbai
for defalcating Rs 47 crore
from a private bank and in-
vesting it in shares reinforces
the notion that laws discrimi-
nate against the poor. The de-
cision has raised serious
questions about the existing
penal laws as well as the sen-
tencing policy.
Another accused has been award-
ed only six months of jail keeping in
view his old age. They have been con-
victed under various sections of the
Indian Penal Code - 403 (criminal mis-
appropriation), 405 (criminal breach
of trust) and 420 (cheating). Under
these sections, minimum punish-
ment is not prescribed whereas maxi-
mum 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 ac-
cused have been awarded the punish-
ment 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 misap-
propriates even a meagre amount on
the ground that the management
has lost faith in him. Sreerangyee
and Maragatham cases illustrate
how heartless and apathetical our
criminal justice administration is
towards the poor.

In Sreerangyee case, the accused
woman is affected by a saga of mis-
fortunes dogged by hardship that
knows no bounds. Deserted by her
husband, she made all efforts to
earn a living to support her five mi-
nor children and herself. Her penu-
rious condition worsened further
when her youngest child became se-
riously 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 fi-
nally convicted under section 302 of
the Indian Penal Code for murder-
ing her children. The High Court re-

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fused to accept poverty as an excuse
for murdering her children and at-
tempting to commit suicide.
Similarly, in Maragatham case,
the accused, husband and wife, hav-
ing 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 un-
der section 307 read with section 34
of the IPC and under section 309 for
attempt to commit suicide.
One wonders whether it is crimi-
nal justice administration or crimi-
nal administration of justice. The
state does not protect the poor's fun-
damental right to life, fails to give
them employment, and yet punishes
them for ending or attempting to
end their lives along their chil-
dren'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 vic-
tims 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 ap-
plied uniformly, and it is rooted firm-
ly in the interrelated notions of neu-
trality, uniformity and predictability
Judges are under an obligation* to
enforce laws without any discrimi-
nation. Instances galore which testi-
fy 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 mari-
juana 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 Eng-
lishman, attacked him.
After suffering so much of hu-
miliation and injustice, the found-
ing 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 inde-
pendence of the judiciary and the
absence of arbitrary powers. There-
fore, equality before the law and
equal protection of the law to all cit-
izens is the most fundamental right
enshrined in the constitution.
"Justice", defined Dante, "is a
certain straightness or rule, reject-
ing the oblique on either side". But
the recent trends show that the sta-
tus 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
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<title>A glorified myth</title>
<author>Sudhanshu Ranjan</author>
<keywords>LR1</keywords>
<publication>The Deccan Herald</publication>
<pubDate>07/05/2008</pubDate>
<description>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." In some cases, the laws themselves are discriminatory while in others their applications are. The net result
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<classif>B40</classif>
<entrydt>21/05/2008</entrydt>
<sd>VD</sd>