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“QUALITY AND DIVERSITY”

Bringing People at the Threshold of Development: the State's Unconditional Accountability to Protect Human Rights

A New Jurisprudence for Protecting Human Rights and Promoting Development

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Abstract

The article postulates that the state of poverty is an outcome of the deprivation of basic human rights for dignified life, obliteration of the freedom to individual autonomy and presence of social exclusion with stigma. Human rights advocacy can have no meaning at all if it ignores to 'emphasize the need of protecting the right to have rights'.

Introduction

Amina was born blind and deaf. She also grew up as a dumb girl, deficient in verbal communication. Her father was killed in the 1950s, in a war between the communist insurgents and the State, in Malaysia.² She grew up in the state of

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² The author has worked as a lawyer for the former *Gurkhas*' movement for equality in salary in pension, during the 1990s. The following information is based on the author's knowledge about the plight of *Gurkhas*, which he learned from the movement: Nepal has a peculiar tradition, in which its citizens have been serving in the British Army, since the era of colonial rule in India. The tradition has had a history of over two hundred years. Historically, Nepal and the colonial British Government in India fought a painful war and, in 1816, Nepal was finally defeated, whose outcome was a treaty pursuant to which a large territory of Nepal was transferred to the British control. In the post-war era, the colonial Government secretly indulged in recruiting Nepalese youths into its military

abject poverty; consequently, she had no opportunity for education in order to be able to have a dignified life. She was 17 year old when one of her cousins raped her and she became pregnant. The crime and her state of pregnancy were kept untold. Her mother was afraid of making the issue public, as she survived by cultivating the land of the offender's father and she feared that the disclosure would put her under the wrath of the offender's family. The infant was born still and was secretly buried in the kitchen garden, but was, unfortunately, unearthed by a stray dog. An enquiry was then conducted, which exposed Amina. She, along with her mother, were arrested on the charge of infanticide. She was found guilty, and was sentenced to imprisonment along with her mother. Amina died of tuberculosis in the prison. When the information about her death reached to her village, most of the villagers felt relieved, believing that she was freed of the troubles of life. The villages preferred death over their wretched lives.³

Now, let us examine the depth of the deprivation that Amina had gone through, in this story. She was born in a state of acute poverty in income, as a virtual result of her father's death while serving in the British colonial army, amidst a state of utter disadvantage and discrimination imposed upon his colleagues and him by the colonial employers, for not being white or British citizens. She was born deaf and blind, most probably because of unhealthy, stressful and poverty-stricken life of her mother, from the time she was a foetus. Moreover, her mother had been suffering from typhoid when Amina was in her womb.

force, as argued by historians, for two reasons: firstly, to drain the youth population of Nepal in order to avoid the situation of a renewed threat by Nepal to the colony, and, secondly, to raise a military of people who could not speak the Hindi language and get them assimilated with native Indian population in order to suppress the probable birth of a quest of independence by the native people. In the post-colonial period, this mammoth sized military, was largely disbanded and a sizeable number was divided into the British *Gurkhas* and the Indian *Gurkhas*. The British *Gurkhas* were deployed in Malaysia where a phenomenal uprising occurred in the 1950s that transformed into a war. The British Government had contracted to participate in that war, on behalf of the Malaysian Government and against the communist insurgents of Malaysia. Many Nepalese soldiers were killed in this war, and many returned destitute in a scheme of redundancy, upon the end of war. This practice of soldiery has been one of the devastating factors behind the massive poverty in Nepal, for two reasons: a) the youth population that was supposed to work for the nation-building was deflected by the British colonial power towards participation in wars, including the two World Wars and the Malaysian War, causing thousands of war casualties that left the soldiers' dependent families helpless; b) those who returned, did so empty-handed.

³ The author was narrated this story by a relative of the girl during the author's visit to the village, along with a group of law students, while engaged in a mobile legal aid program. Due to the imperatives of research ethics, the name of the girl has been changed and the actual village has been kept unidentified.

The poverty Amina's mother had been living with was excruciating in all senses. Obviously, Amina was born in a downright economically disadvantageous state, being affected by various consequences of her parents' state of deprivation and destituteness, subsequently rendering her disabled even before the birth.

Conspicuously, the physical deficiencies she had undergone were the culminations of her mother's want of adequate food and the hardships in her life. Amina's deficiencies were virtually imposed on her by 'the state of deprivation, denial and social exclusion her parents had been forced to live in' and they were insurmountable by her efforts alone. The social values, norms of morality and cultural practices did not stand in favour of her protection. The system of law and justice had nothing to offer to her; conversely, they damned her as a culprit of an heinous offence.

She grew all along with her disabilities, and consequently was deprived of every opportunity necessary for decent growth of a child. Education was out of her reach due to which she was forced to bear illiteracy and ignorance, as a part of life. As a disabled girl child, she suffered from contempt from her society; she was subjected to all forms of violence, including rape, and subsequent trauma and agony. She was raped by a male, and then, figuratively, by the system of justice. Finally, she was crushed by the diseases that befell on her as an outcome of the 'circumstances' of want, the filthiness of the surrounding within the jail, and the inhuman treatment perpetrated by the prison system. The 'totality' of the consequences revealed by this story is 'metaphorically' called poverty.

The state of poverty that *Amina* had to go through consists of violations of the following fundamental rights of every human individual: (a) the right to the physical integrity along with the right to protection of the personhood of individual; (b) the right to life with standard of living, including adequate food, clothing, shelter and medical care; (c) the right of access to 'fair and impartial' justice; and (d) the right against the cruel and inhuman treatment. Alongside, Amina's right to education and be involved in economic enterprises are also grossly violated. The outcome of the cumulative of these violations is that Amina's life is subjected to a state of extreme marginality that conceptually represents the bottom-line of the 'threshold of development, which explicably symbolizes that (a) her right to physical integrity is jeopardised, without remedy; (b) her worth as a person is disvalued; (c) freedoms of life is constrained or denied to her (d) her rights to education and learning are deprived; and (e) her right to engage in earning or employment is incurably affected.

Vector of Life, Comparative Advantage and Protection of Human Rights

In a given scenario of violation of human rights, as discussed above, a person's 'vector of life'⁴ becomes fully constrained and unworthy of being continued. In a generic sense, the 'vector of life' is a structure of life collectively formed by various elements, such as education, adequacy and availability of the means of production, entrepreneurship, skills and arts employed in production, consumption pattern, condition of market interaction, the potential of a person's adaptability, and so on. A person may have good potential in marketing the yields, but may lack skills and arts for production. Similarly, a person may have refined skills and arts for production, but may not have the market facilities. The vector of life is definitely affected by such diverse factors. A comparatively advantageous vector of life is formed by a composite structure of the series of factors or elements. Each constituent element, indeed, plays a crucial role in strengthening or weakening the given vector of life. In this sense, development is a 'process of positively effecting the change in each associated element of the given vector'. Every element associated in forming the given vector, being an objective phenomenon or event, may change positively or negatively, according to the situation. If the element gets transformed into a comparatively better position, the vector is positively transformed too. If all the elements of the given vector are transformed positively into an integrated form or unison, the given vector of life gets rapidly transformed towards a well-off situation. In this sense, development is an instrument for positively transforming the 'vector of life' towards an efficiently productive state.

Each element playing a role in shaping the given vector inherently embodies a 'claim or right', which together with similar claims or rights associated with

⁴ The terms 'vector of life' refers to a 'structure of life' formed by the unity of various elements associated with life of each individual or family. The term vector, in a generic sense, refers to a station or platform or the state of life being carried on. Vector of life in the form of family unit is a 'cumulative structure of vector of life of each member' of the family. Vector of life of an individual is formed by body of 'objective elements', so that each individual's life, although much similar to another individual's life, is different because of the differences in the comparative strength of each contributing element. The elements constituting the vector can be collected and analysed in order to ascertain the exact state of life. The elements contributing to the vector are changeable, and the changes thus occurring in the elements 'change the structure of the given vector', in turn. This implies that 'change in the vector of life' refers to the change in one or more elements associated in forming the given vector or *vice versa*. The development in a life of person negatively or positively affects the elements that account for formation of the given vector. Recognition, respect and protection of rights' play crucial role in change of the elements accounted for forming the vector. No endeavour of development without recognition, respect and protection of right can make difference in the vector of life.

other elements constitutes ‘an independent person of the holder of the vector’. When such claims encounter a loss or are encumbered by constraints imposed by law or societal factors, for instance caste and gender-based social stratification, the elements shaping the person's vector of life tend to lead the holder's person into a trap of subordination. The loss of claims renders the constituting elements inefficient and ineffective to push the vector to a better state of standing. This argument can be illustrated better by an example of the poor people in developing countries who face a deprived position in land holding. Occupation of land and its productivity is considered to be an important element for ‘shaping the comparatively efficiently productive vector’ of poor farmer in developing countries. In this case, having ownership over a land with is an important element of the vector. It embodies a claim known as possession, which empowers the holder to exclusively enjoy the land for his/her benefit. Greater the independence of the claim of possession from constraining encumbrances, higher the assurance of a flourished vector. In this line, laws and other societal factors certainly weaken the strength of claim and push the vector into an unsecured position.

Supposing that the government prohibits the holder to lease the land independently by imposing a law, the possession, which exists as an inherent claim in the occupation of the land, becomes constrained and, in turn, renders the element shaping the given vector weaker. The act of attaching more constraints to the constituent elements pushes the given vector to a deplorable state. For instance, imposition of legal constraints on possessory claim weakens the utility of the land by creating a negative impact on the element of productivity of the land, which in turn, affects the earning capacity of the person. The impact of the loss of possessory claims is pervasive in the entire vector as it eventually results in a state of marginality in the worth of person. Hence, the loss of claims associated with elements that shape the vector of life results in economic deprivation, social exclusion and attached stigmas, which is cumulatively defined as a ‘state of subordination’. Conspicuously, violation of human rights and the subordination resulted by the weakening vector of life have an interface. Deeper the state of human rights violation, larger the grip of the spectrum of poverty on the lives of people. Therefore, poverty cannot be addressed without enhancing the regime of human rights protection. More the state of human rights protection is enhanced, swifter the state of poverty declines. The act of protecting human rights and reducing and eliminating the state of poverty, in this sense, economically implies a state of ‘enhancement in the vector of life’ and development implies an instrument for protecting human rights in order to get rid of the state of poverty.

The weak and non-yielding vector of life can be defined as a 'state of subordination', both economically and socially and the term is quite different from what we call 'discrimination'. When the vector of life falls in the bottom-line of socio-economic development, the state can typically be called a state of subordination. It is not a by-product of the state of discrimination because it extends beyond the discriminatory conducts of a State.⁵ This theory has, however, been consistently rejected by the States. Subordination is primarily viewed as a by-product of discrimination; hence the States' focus is always on the 'anti-discrimination principle' which functions through the doctrine of 'equal protection of law'. This doctrine is invoked to seek remedy when a State makes a differential treatment among individuals, on the basis of caste and class. Unfortunately, poverty itself is not considered a discriminatory treatment by a State. The anti-discrimination principle is, therefore, not applicable in the perspective of poverty, as it has been limited to the discriminatory treatment of State to the individuals. This notional misunderstanding about discrimination and subordination has been a serious inroad in the development of human protection regime in developing countries. Development as an instrument of effecting positive change in the vector of life must therefore be considered as a human right of people.

Poverty, which pushes the vector of life of individuals to the bottom-line of development, is a matter of social structure. Obviously, a reason for the serious failures of States in addressing the problem of poverty is the attitude of States, themselves. Both, the State institutions and international organizations, while defining poverty, rely on the perspective within the principle of anti-discrimination, which refuses to examine the structure of society. They resist employing the principle of anti-subordination because of their obsession towards the mistaken view that subordination occurs only as a by-product of discrimination' while the truth is just the opposite, which shall be clarified by an examination of the wrongs arising out of the conducts of discrimination and subordination.

Subordination is an outcome of social position generated by the lowest degradation of the vector of life. When a vector of life is pushed to the bottom-line of socio-economic development, it automatically falls in the trap of 'social exclusion, difficulties and morally irrelevant state'. We could take the example of people who have been forced to live in extremely deplorable conditions in ghettos. Life in a ghetto is not chosen; it is ascribed. The lives of people living there are full of wants and inconvenience and painfully enough, one has to

⁵ Sergio J. Campos, 'Subordination and the Fortuity of Our Circumstance', vol. 41, no. 3, *University of Michigan Journal Law Reform* 585, 2008, p. 587.

compromise the moral values. Prostitution and criminality become compulsions if other reasonable opportunities are exhausted. Such a state of life is a typical subordination as the other options for choice cease to exist. The harms that arise from discrimination and subordination are, apparently, different. As it is clearly seen from differences in perspective associated with discrimination and subordination, the harm sustained by a person in subordination is purely an outcome of ill-structure of the society which begets ascribed, difficult and morally irrelevant social positions.⁶

Most of the States and international organizations' failed efforts to alleviate poverty are due to their misconception that subordination and discrimination share the same perspective or attributes. Anti-subordination principle leads to a distinct theory of state obligation. The state of subordination requires a State to fulfil its commitment to eradicate all those structures which generate subordination. The anti-subordination principle, therefore, bases the liability of the State on the simple existence of subordination. The principle of anti-subordination draws legitimacy of individual's claim of equality from a fact that nature has provided resources equal to all. The natural or inherent human rights of individuals suggest that 'a person is free to take position in a society based on his/her ability'. Person's position in society is not determined by aspects of the person that are imposed, difficult to exist or avoid and are irrelevant from the moral point of view.

As rightly pointed out by Sergio Campos, the anti-subordination principle takes structural perspective as opposed to transactional perspective of anti-discrimination principle.⁷ The latter focuses merely on conducts of states towards persons. As a matter of fact, the view that discrimination is taken as an outcome of the wrong conducts of State towards an individual needs a correction, in accordance with principle of equal protection of law. In contrast, the structural perspective of anti-subordination principle is concerned with social conditions and how these conditions affect persons in society. The anti-subordination principle intends to correct the harm which exists in the form of prohibited socio-economic condition or constraints in capability due to the imposed socio-economic conditions. The subject of the 'transactional perspective' is the state's obligation to correct its wrongdoings that arises by its unauthorised conducts. The structural perspective taken by anti-subordination principle, however, requires a State to intervene whenever the prohibited socio-

⁶ Campos (n 5), p. 612.

⁷ Campos (n 5), p. 591

economic conditions or constraints in capability of persons exist. The goal of intervention is not to correct the wrongdoing, but to fulfil the commitment of 'reordering the society'.

From the perspective of 'subordination principle', the subordinated or adverse vector of life is a state of total denial of human rights; it is defined as a state of subordination. The vector of life in this state is characterised by:

- (a) a paradigm of survival, which is fully constrained by anti-human rights and morally prohibited socio-economic conditions;
- (b) the capacity of a person to oppose and remove these constraints is disabled, implicitly by the laws and attitude of the State,
- (c) the impact of disability thus imposed is pervasive in all the aspects of life.

The state of life illustrated by Amina's conditions is typically a subordinated vector of life, because all the claims associated in the elements that shaped her life are adversely conditioned by the prohibited socio-economic conditions and constraints in capability. This state of life is characterised by a perspective of structurally prevailing subordination and gross injustice. She had been deprived of the claims that are inherently associated with elements shaping her vector of life. This situation could be changed for the better by the State by fulfilling its commitments to eradicate all constrained or prohibited economic and social conditions. The removal or eradication of these conditions by State enables persons to assert their claims in order to boost the elements that shape the vector of life.

In this sense, development endeavours are the requisite interventions by the State to eradicate constrained or prohibited economic and social conditions which give rise to morally depraved, legally unjust and socially excluding social structure. Human rights instruments are to be used as indicators by the State when carrying out the development interventions for restructuring the society. Development is a process of positively effecting the change in the elements that are involved in forming the vectors of life of persons. If a person, for instance, obtains an opportunity to pursue meaningful education, his/her capacity to effect positive change in other elements of the vector of life would be changed automatically. Hence, a person's efforts to educate himself/herself here is a 'process of development', and in turn, an instrument of human rights protection. Similarly, if a person has access to resource and market for his/her yields, it enhances prospect for further change in his/her vector. Moreover, if the person has easy and comfortable access to present his/her claims through a system for restitution if they are violated, the process of change in his/her current vector towards a better condition would not be disturbed. Here, all

these processes refer to development and the ultimate vehicle of human rights regime.

However, development, as a change agent in the vector of life, is dependent on an individual's capacity accounting for his/her 'person'. The capacity is built by 'a bunch of rights' which he/she obtains inherently or by the operation of laws. The ambience of enjoying such rights is created by the body of laws, which is a 'condition precedent' for an efficient and effective development process. Rights would be of no use without development endeavours for effectuating changes in constituent elements of the vector of life and the development endeavour would fail to transform into a change agent of the given vector without composite capacity of a person, collectively formed by a bunch of rights. Poverty and underdevelopment of a person, in this sense, is a failure of law to generate capacity of a person to assert rights to enjoy development endeavours for desired change in his/her vector of life.

Poverty as a metaphor of life epitomized by denial or deprivation

The denial or deprivation of rights is called 'injustice⁸ in simple and generic sense'. An instance of injustice places a person out of the ability to exercise his/her capacity to assert rights, to continuously effect changes in elements accounting for formation of his/her vector of life. Denial or deprivation of rights incapacitate persons from asserting genuine claims for enjoying the process of development efforts, as a consequence of which the person is pushed to the state of marginality in vector of life. This state is metaphorically defined as poverty.

Poverty has been described in different ways in different times. Most religions have historically define it as 'a destiny' of human life, though none of the religions consider poverty as something to glorify. All the religious traditions have expressed their concerns to prevent it⁹ and none of them have glorified

⁸ Injustice results as an outcome of denial or deprivation of socio-economic and political rights of person, which, in turn, blocks the process of positive changes in the elements of the vector of life. See Amartya Sen, *Choice, Welfare, and Measurement*, Oxford University Press, 1982, pp. 24-31.

⁹ For instances, New Testament in Matthew(19:16-30) and Luke (18:18-30) contains a parable of a rich man's queries to Jesus. Jesus in his response to the rich foolish man, implicitly repudiates the 'prevailing belief' that richness is a blessing of the God. Jesus has said that a rich man who refuses to share property with poor finds it more difficult to enter the God's home than camel, as entering into the God home one has to pass through a hole of needle point'. Jesus's advice to the foolish rich was to share his property to poor. For detail, see W.F. Allbright & C.S.Mann, *Matthew, The Anchor Bible*, Doubleday and Company, 1971; The Old Testament, in Deuteronomy 15, expresses concerns to the poor.

'richness' too. They hold the view that 'quest of unlimited richness' involves greed and spoils salience of moral regime. Historically, poverty has been described as an outcome of idleness or lacking of wisdom. Human evolutionary theories describe that 'the necessity of educated people to be wise and possess means of well-being'. In the past, human society took poverty as a matter of misery, calling for charity of persons. It was also considered an unavoidable fate, which the human being could not change. The perception about poverty has been changed with advent of the new theories of economics, science and technology and accompanying 'meaning of life'.¹⁰

It says, 'There will be no poor among you ... if only you will obey the voice of the Lord your God. . . . If there is among you a poor man, one of your brethren, in any of your towns within your land which the Lord your God gives you, you shall not harden your heart or shut your hand against your poor brother, but you shall open your hand to him, and lend him sufficient for his need. . . . You shall give to him freely, and your heart shall not be grudging. . . . For the poor will never cease out of the land; therefore, I command you, You shall open wide your hand to your brother, to the needy and to the poor . . .'. Bruce C. Birch, 'Hunger, Poverty and Biblical Religions', *Religion Online Organization* available at <http://www.religion-online.org/showarticle.asp?title=1855>, accessed on 20 October 2014; Buddhism considers poverty as bad because it involves *dukha* (suffering). The key message of Buddhism is to eliminate *dukha*, and for this end, it advises people to renounce greed. Buddha, in his teaching, has advised people to possess enough material resources, enjoy those resources, share them with relation and friends and being not in debt'. See David Loy, '*Buddhism and Poverty*' *National Taiwan University Online Library* available at <http://buddhism.lib.ntu.edu.tw/FULLTEXT/JR-MISC/101785.htm>, accessed on 20 October 2014. Hinduism recognizes the importance of material wealth for the overall happiness and well being of an individual. A house holder requires wealth, because he/she has to perform many duties to uphold *dharma* and ensure the welfare and progress of his/her family and society. While Hinduism advocates austerity, simplicity and detachment, it does not glorify poverty. '*Purusarthas, Hindu Way of Life*', *Mailer India* available at www.mailerindia.com/hindu/veda/index.php?Purasarthas, accessed on 20 October 2014.

¹⁰ As described by Hindu scriptures, the very first goal of life is pleasure, in its assorted material and abstract forms, implying claims to food, housing, clothing, art, music and dance. James Fieser, 'Great Issues in Philosophy', *The University of Tennessee UT Martin* available at www.utm.edu/staff/jfieser/120; Also see Karl Britton, *Philosophy and the Meaning of Life*, Cambridge University Press, Cambridge, 1969; Also see John Cottingham, *On the Meaning of Life*, Routledge Publications, London, 2003; Also see Milton K. Munitz, *Does Life Have a Meaning?*, Prometheus Books, New York, 1993. According to Taoist teachings, human beings should live in accord with flow of nature; no one should aggressively go against it. See James Fieser (n 10). Buddha's teaching about meaning of life is simple. He begins by describing 'four noble truths' of life: (a) life is suffering; (b) source of suffering is desire; (c) cure of suffering is the elimination of desire; and (d) so that each person has to follow eight paths to enrich the life, which emphasize cultivation of proper or right understanding, thought, speech, action, livelihood, effort, mindfulness and concentration.¹⁰ Pursuing these teachings, according to Buddha, will lead a person to a state of *Nirvana* (enhanced spiritual enlightenment). Hence, to achieve *nirvana* is the ultimate goal of life. The achievement of *nirvana* transforms an individual from 'I' to 'We'. Hence, '*sarvajana hitaya sarvajana sukhaya*.

Poverty as a metaphor: The term ‘poverty’ is ordinarily used to signify a state in human life that is subjected to a circumstance of want or suffering from hunger and deprivation. Generally, a circumstance symbolizing a vector of life without essential items such as food, clothing, water and shelter needed for proper living is ascribed to poverty. In 1995, the UN World Summit compassionately attempted to define poverty through the *Copenhagen Social Development Declaration* as ‘a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information’.¹¹

Some people have suggested that poverty is a matter of lack of money.¹² In 2000, World Bank came out with a definition of poverty ‘as a pronounced

For detail, see Yubaraj Sangroula, *The Philosophy of Law, Oriental Perspective*, Kathmandu School of Law, Kathmandu, 2010. Islamic thought on life is very precise and unequivocal. It says, life is a great gift of *allah* and is to be cherished and protected. Islam therefore talks of ‘alms’, a system of compulsory contribution of charity by those who have to support those having resources. See Dr. A. Majid Katme, ‘Sanctity of human life is basic concept in Islam’ available at www.spuc.org.uk/about/muslim-division/euthanasia, accessed on 25 October 2014.

¹¹ The Declaration added that ‘poverty depends not only on income but also on access to social services’. Most international organizations have taken same approach to define poverty. *Copenhagen Declaration on Social Development*, UN Doc. A/CONF.166/9, adopted on 14 March 1995, annex II, s.1; A report of the World Bank, for instance, states that absolute poverty refers to ‘the state of severe deprivation of basic human needs, which commonly include food, water, sanitation, clothing, healthcare, education and information’. The report categorizes poverty as absolute and relative poverty, the latter referring to a state ‘contextually as economic inequality in the location or society in which people live’. World Bank, ‘Measuring Inequality’, *World Bank* available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20238991~menuPK:492138~pagePK:148956~piPK:216618~theSitePK:430367,00.html>, accessed on 25 October 2014; The one more approach to determine poverty is known as ‘income and consumption determination’ method. In this method, the researchers have to determine ‘the per-capita income and per-capita consumption amounts.’ For detail, See Geoffrey Gilbert, *World Poverty*, ABC-CLIO, Santa Barbara, 2004; Also see Sanjay G. Reddy, *How not to Count Poor*, Columbia University Press, 2005; The difference is then used to ‘determine the level of poverty’. This method proceeds by quantifying the ‘poverty status’. In all of these methods, the *de facto* situation, which is a cumulative effect of various factors, is seen as poverty. All these definitions and methods take poverty as a tangible substance or object, thus making attempt to identifying its underlying characters or attributes.

¹² For example Jonathan Haughton & Shahidur R. Khandker argue that ‘poverty is the deprivation of food, shelter, money and clothing that occurs when people cannot satisfy their basic needs’ and add that poverty can be understood simply as lack of money, or more broadly in terms of barriers to everyday life. Jonathan Haughton & Shahidur R. Khandker, *Handbook on Poverty and Inequality*, World Bank, Washington DC, 2009.

deprivation in well-being'.¹³ However, the term well-being is susceptible to definitions under different settings, inviting relativism in treatment. The definition of the 'standard of well-being' may be quite different in USA than in Nepal. For instance, during 1990s, to have a post-paid mobile telephone was considered to be a 'sign of well-being' in Nepal. In definition, the concept of well-being is, thus, susceptible to adoption of an 'external value' rather than an internal one.

Furthermore, the term well-being is being taken differently by different institutions, countries and academics. Some have defined it 'as a command over commodities in general' and concluded that the people having greater command over commodities are considered well-off'.¹⁴ This is seemingly a conventional approach of perceiving poverty, which 'underlies money and the material resources as the decisive factor for making and eliminating poverty'.¹⁵ According to this perception, people with income and consumption below the defined threshold are considered as poor, and the rest as non-poor. This approach deceptively adduces the Benthamite notion of happiness which is based on the theory of utilitarianism or the theory that happiness is a result of access to 'means of happiness'.¹⁶ Some other people have approached well-being in the sense of 'ability to obtain specific type of consumption goods'¹⁷, for instance, food, shelter or education. This approach also derives insights of 'well-being' from the notion of happiness. Amartya Sen's approach is the broadest one. In his view, 'well-being' comes from a capability to function in

¹³ World Bank, *World Development Report 2000/2001: Attacking Poverty*, Washington DC, 2000.

¹⁴ Haughton and Khandker (n 12).

¹⁵ *Ibid*, p. 2.

¹⁶ Utilitarianism, as a normative ethics theory, emphasizes that every action must maximize happiness and minimizes suffering. The classical or hedonistic theory of utilitarianism argues that materialistic pleasure is the only intrinsic good. *Charavaka* philosophy in Eastern philosophy propagates for hedonism, that is, life is the ability to enjoy happiness by all means and argues, in opposition to other schools of Hindu thoughts, that there is no other life after death. In the Western tradition, Democritus might be considered as the earliest philosopher to have categorically embraced hedonism. The Cyrenaics, in the early Greek philosophy, represent the ultra-hedonistic thought, who argued that pleasure is only intrinsic good. The classical or hedonistic approach emphasizes material well-being as a salience of happy life. The quality of richness and poverty is, thus, implicitly looked upon as a state of having or not having the materialistic adequacy of life. Such definition of poverty is, therefore, impliedly based on classical or hedonistic aspect of adequacy or happiness. This approach undermines the 'importance of rights that constitute the worth of human person'. See James Hastings, *Encyclopaedia of Religion and Ethics*, Charles Scribner's Sons, 1922, p. 6.

¹⁷ Haughton Khandker (n 12), p. 2.

society'. As a matter of fact, for him the poverty occurs 'when people lack key capabilities and have inadequate income or education, or poor health, or insecurity, or low-self confidence, or a sense of powerlessness, or the absence of rights such as freedom of speech'.¹⁸ His approach opens the door to consider poverty from rights' perspective.

The capability theory obviously makes attempt to view poverty into its insights or underlying causes. It gives a sense that poverty is an effect or consequence rather than cause, and thus calls, though implicitly, to identify elements that are functioning as causes or factors from which the concept usually known as poverty springs out. It gives an ample space to philosophically ponder that the term poverty is nothing but a shallow understanding of the reality. The poverty, to understand in its essence or the underlying constituent factors, is neither a concept nor substance, it is rather a metaphor.¹⁹ From Sen's theory of capability, poverty can be considered a sum or totality of conditions resulting due to lack of capabilities occurred in the life of people.

No doubt, the human capability is associated with the recognition of the worth of human person as a sum total of rights some are inherently acquired and others obtained through laws. The lacking of capability impairs the 'worth of human person' which is a salience of equality of all human beings. To consider from this premise, poverty is an outcome of acts of denial or deprivation of rights that constitute an autonomous person in an individual. The denial of autonomous person, in turn, establishes the state of inequality. Conceptually, the state of inequality is a state of injustice. Poverty, in this sense, is a metaphorical reflection of denial or deprivation of rights constituting the autonomous person and individual which establishes a state of inequality among human beings. The definition of poverty as a source or cause of rights, is thus, conceptually wrong and as such constitutes the serious causes for failures of policy interventions of organizations or institutions involved in elimination of poverty. One cannot eliminate cause which does not exist. In other words, one cannot eliminate the cause by reflecting on consequence. The contemporary poverty elimination efforts of States and international or national organizations are, thus, largely symptomatic.

¹⁸ For detail, see Amartya Sen, *Commodities and Capabilities*, Oxford University Press, Amsterdam, 1987.

¹⁹ Theory of Rene Descartes can be helpful to understand the idea that 'understanding' and 'knowledge' are two different things.

Let us now reflect on the UN approach in the definition of poverty. As early as 1998, the UN introduced a definition of poverty, through a statement signed by all the UN agencies, which states that:

Fundamentally, poverty is a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and clothe a family, not having a school or clinic to go to, not having the land on which to grow one's food or a job to earn one's living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation.²⁰

The focus of this definition, though it is descriptive of the outer characters, somehow rests on the constituent elements, as it implicitly indicates poverty as consequent condition of human person, that has emerged out of acts of dispossession of capacities endowed upon human beings inherently or by operation of laws.²¹ Most important insight the definition refers to is the dignity of human being. Thus, the definition accords care to a reflection on importance of the worth of human person. The state of poverty, as an outcome of the denial or violation of rights constituting the worth of human person, indeed impairs the human dignity, which is a core essence of human rights, rule of law and democracy. The interaction of individual and society is an equally important aspect of dignified human life. Two core elements: violation of human dignity and deprivation of basic capacity to participate in societal interactions, are the factors which produce all the other forms of lackings/wants. Together with two core elements, they constitute a state which is known by denomination of poverty in the contemporary social science.

Poverty as an outcome of obliteration of human personality: The ways in which human beings live are culturally different. Which mode of life is better invites a philosophical debate on meaning of life and its moral justification, which is not an objective of the discourse here. However, one can empirically see that human beings' lives have different vectors, without labelling them good or bad. A professor teaching at a University spends most of his/her time in the library or classroom. He/she may be more mentally tired every day than

²⁰ *Indicators of Poverty and Hungers*, United Nations, signed by all UN Agencies on 1998.

²¹ Joseph Raz, 'Human Rights in Emerging World Orders', vol. 1, *Transitional Legal Theory* 31, 2010, pp.31-37.

bodily. A farmer works in the field and may be more physically tired than mentally. A professor may argue that the life of farmer is comparatively easier and comfortable. The farmer may argue quite the opposite. Certainly, the outer conditions of their survival, ways of behaving, interacting and perceiving are different. Which one of these two lives is good, provokes controversy and an unending debate. The issue of adaptability or the changes in elements forming the structure of life, however, can provide a reasonable basis for comparison in between these two different modes of lives, describable through the term vector, here, the vector of the professor and the farmer's lives. By applying higher adaptability potential or comparative advantage, it is comparatively easier for a professor to switch the elements shaping his/her vector of life with that of a farmer, because the professor is equipped with education that helps him/her to acquire the required information to become a farmer, thus, learning the skills of farmer more swiftly, whereas it is not equally easier, if not impossible, for a farmer, for the reason of having no education and consequent difficulties to obtain required information, to transform his/her vector of the life into that of the professor. The professor may learn to adapt by engaging his/her efforts empirically, whereas for farmer the empirical engagement alone is not enough. Keeping this philosophical underpinning in mind, it can be argued that development is a process of 'brining about change in the quality of life by effecting change in the associated elements that are responsible for shaping the given vector of life'. The optimum level of development, however, may fully transform the given vector in a new one. So the concept of development underpins intelligible stages or degrees of changes which may either result in: (a) desired reforms or improvement in the current vector of life or (b) transformation of the current vector into a new one.

To consider from this theoretical premise, poverty can be described as an outcome of an act of deprivation from opportunities or destruction of potentials for adapting to changes for improvement or transformation of the given vector of life. Now, in order to demystify the prevailing notion, the state of poverty can be defined as a state of injustice, which occurs as an outcome of denial or deprivation of the rights to use potential of human capabilities. Hence, it is not a state of lacking of food materials or well-being alone; indeed, it is a state of denial of right to acquire materials of well-being food, itself. It not the lack of capability alone, but it is a denial or violation of the right to use the capability also.

This argument can be illustrated through the reference of the 'community of *dalit* in India, Nepal and some other countries'. It would be intelligible to use an example, for this purpose.

A poor *dalit* from a rural village sold whatsoever property he had and migrated to a city. He was an intelligent and hard working man. He also had tremendous potential of effectuating changes in elements of shaping his current vector of life. He thought about set up a fast food restaurant in the city, which could give employment to his entire family. His wife could help him cook and his grown up children could help him clean the restaurant, utensils and other necessary activities required to keep the place hygienic and attractive. In few days after the restaurant was set up, neighbours who noticed that his belonged to a *dalit* family began gossiping and spreading rumours. He stopped getting clients and felt psychologically humiliated. He was then forced to terminate the business by closing his restaurant. The constraints, thus, posed an inroad in his mission of changing his vector of life.

The *dalit* man's capability to effect change in his current vector of life is negatively affected by the constraints imposed against the use of his acquired capabilities. It means that he has been forced to live in a state of deprivation as an outcome of the denial of the worth of his person', a state of imposed inequality. He may venture out in search of a different occupation, but it is most likely that he will face the similar situation repeatedly. What he needs here is the recognition, respect and protection of the right to assert his capabilities to bring about changes in elements that contribute in shaping his current vector of life. Therefore, poverty is, basically, a state of denial of right to be treated as equal human person. The illustration is equally applicable to women and minorities in developing countries.

Present jurisprudence on human rights has been predominantly emphatic towards the rights regarding the access to equitable distribution of means and adequate standard of living. It is less sensitive about and has sidelined the 'basic or first right' of individuals, on which the possibility of enjoyment of the other rights rests. At this point, it is necessary to briefly observe the theories being used by human rights movement on this issue.

Inducement theory has been predominantly used by stakeholders to persuade the government to ensure welfare and social security packages of the poor, with an object of appeasing the deprived community. This theory, therefore, can be described as an 'appeasement theory'. The subject of this theory is not the recognition and protection of the rights of poor as a person with same dignity, but the feeling of generosity for their poverty. Human rights movement, thus, makes efforts to induce the government to declare welfare and social security programs for the benefit of the poor which has only a monetary effect. However, most of governments and international organizations are characterised by this theory. The benefit obtained by the people from such

programs has no sustainable effect. Instead, they are symbolic of generous charity. FAO's food for work, the Government of India's guarantee of employment for 4 days a week, the Government of Nepal's Ganeshman Singh employment programs are few typical examples.

The inducement theory was first used by United Latin American Citizens (hereinafter LULAC) after the Second World War, in USA, for inducing the American government to address the discrimination against Mexican Americans.²² This organization advocated among the US policy makers that the discrimination against Mexican Americans will hurt the US' foreign relation with Latin America. Through this advocacy, LULAC was able to make the American government declare a number of new policies on welfare and social security for the benefit of the Mexican Americans.²³ The theory has also been used by many NGOs in developing countries as tool for right advocacy for the empowerment of the poor. However, the theory is not based on 'recognition of equal worth of persons' and does not emphasize the inherent rights of the poor to have a dignified life as person. It does not pay attention to the reality of subordination that poor have been forced live in.

Assimilation theory is primarily used by the activists of 'group rights' in order to promote assimilation of minorities or excluded groups into the mainstream. It is generally believed by protagonists of this theory that poverty is an outcome of deprivation of right to identity. They believe that the problem of poverty would be addressed by assimilation of the group into the mainstream.²⁴ The fundamental conception of this theory is that the state of stratification, exclusion and stigma is a primary cause of poverty. Although the spirit of the theory is correct, it is questionable if the assimilation would address the problems of poverty at once Nevertheless, the theory correctly applies the truth that the recognition of equal human worth of persons' enables them to assert their human rights.

Non-discrimination or equality theory is a 'widely advocated theory' in the US Supreme Court, in particular. The key idea of the theory is constructed on the

²² Kevin R. Johnson and George Martinez, 'Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship', vol. 53, *Miami Law Review* 1143, 1999 available at http://papers.ssrn.com/so13/papers.cmf?abstract_id=244677, accessed on 2 December 2012.

²³ See David G. Gutierrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Policies of Ethnicity in American Southwest*, University of California Press, Berkeley, 1991, p. 132.

²⁴ Johnson & Martinez (n 22).

'self-identity notion', which calls for recognition of individual being as an independent entity with rights and freedoms to exist differently, but with equal treatment to his/her identity.²⁵ Philosophically, the equality or non-discrimination theory emphasizes the history or social identity of every person as a matter of pride. The rights to recognition and protection of culture, language and social origin receive legitimacy from this theory.²⁶ The equality or non-discrimination theory has, however, rested heavily on the outcast principle, which was first invoked by the American Supreme Court in *Strauder v. West Virginia*²⁷. According to this theory²⁸, equal protection law and anti-discrimination statutes should eradicate public and private policies that subject some persons to ongoing stigma and subordination, which then relegates them to second class status.²⁹ The subject of the principle is a policy or law or government action that discriminates a person. As pointed out, many American anti-discrimination legal scholars and societies often disfavours people of different traits or conditions that are not popular. The caste principle is, thus, implicit in the principle of equality or non-discrimination.³⁰ A serious set-back in this theory is that it does not pay attention to the state of subordination occurring due to the consistent application of discrimination over some people, giving rise to a typical stigmatic social position, such as people living in prostitution, slum and poverty. The social structure which creates the state of discrimination is not a subject matter for this theory.³¹

Critical theory puts emphasis on the rights analysis approach of discrimination and subordination. Its focus is to undercover the types of rights subjected to violation and the patterns employed in order to violate such rights. Poverty, according to this theory, is therefore an outcome of discrimination and

²⁵ Johnson & Martinez (n 22).

²⁶ *Ibid.*

²⁷ For detail, see *Strauder v. West Virginia*, Supreme Court, the United States, 100 US 303(1880).

²⁸ For detail, see David Orentlicher, 'Discrimination Out of Dismissiveness: the Example of Infertility', vol. 85, no. 1, *Indiana Law Journal*, 2010 available online at <http://ssrn.com?abstract=1359417>, accessed on 26 October 2014.

²⁹ This assertion was established by the US Supreme Court in *Frontiero v. Richardson*. The principle is predominantly used to rectify discrimination based on gender, color and other differences. The principle of equality, however, has been hardly used specifically to address the problem of poverty. Poverty has not been recognized as a matter of discrimination so far. See *Frontiero v. Richardson*, Supreme Court, the United States, 411 U.S. 677, pp. 684-88.

³⁰ See Kenneth Karst, 'The Supreme Court, 1976 Term: Foreword: Equal Citizenship Under the Fourteenth Amendment', vol. 91, *Harvard Law Review* 1, 1977, p. 5.

³¹ See Campos (n 5).

subordination that arises out of violation of individuals' rights. This theory believes that the occurrence of poverty is a result arising out of the State's failure to adopt anti-discrimination and anti-subordination policies in development endeavours. Critical theory does not limit itself to interpretation of law alone; rather it uses other sciences such as economics, sociology, anthropology, political science, ethics, psychology and so on in order to understand the causes, outcomes and impacts of the violated rights of persons. This theory has been widely advocated by the Latino-scholars in the USA in order to provide a stronger scholarly perspective to the movement of equality in the USA. The critical theory seeks to explore missing voices into socio-legal discourse and contemporary policy making.³² The anti-subordination principles constitute the fundamental thrust of the critical theory as regards the issue of poverty. It calls for substantial change and focuses on commitment of the States to intervene against poverty as right of the poor.

Human rights instruments comprise the basis of legitimacy of arguments for the critical theory. The obligations established by the international conventions on these rights are mandatory, thus, the States have obligation to end the state of poverty as an outcome of the violation of human rights. It encourages the State to adopt policies and programs to raise the capability of individuals so that they can rise from the bottom-line vector of life. This obligation of the State requires them to approach the recognition and protection of rights of poor from multicultural, multidisciplinary and multilinear approaches, with the promotion of education and economic empowerment being the most fundamental priorities of intervention. The recognition of 'individuality identity and worth of person as guaranteed by the international human rights instruments; pro-active intervention for social changes targeting the eradication of regressive status quo; recognition of intersectionality within the community; eradication of 'social exclusion and stigma' are the development agenda of the State to eradicate poverty'. The anti-poverty critical theory, in the light of discussion above, calls for departure from the convention definition of poverty. As indicated before, poverty is neither a destiny nor fate of life, not is it an outcome of the indolence of persons.

³² See Francisco Valdes, 'Legal Reform and Social Justice: The Introduction to LatCrit Theory, Praxis and Community', *The LatCrit Monograph Series*, 2003 available at www.latcrit.org/publications/monographs/icfvenglish.pdf, accessed on 26 October 2014.

Definition of Poverty from the Perspective of Barriers in the Change in Vector of Life:

The approach of considering poverty as a set of imposed barriers in persons' potential of effecting changes in the elements of shaping the given vector of life defines poverty as a state of injustice, resulting from denial of being treated in equality and implying a state of denial or violation of number of rights, that constitute the core of personality of every human person.³³ Poverty, in this sense, is an outcome of some active acts of others³⁴ that render one's rights denied or violated. This argument implies that poverty does not emerge automatically or in vacuum of acts of somebody else. One's violation of the other's rights involves some concrete actions in former's part, which, in consequence, engenders a state of poverty.³⁵ Human personality is, therefore, a matter of prime concern to understand the nature of poverty symmetrically. Personality is, conceptually, a totality of the persons' rights, of which many are fundamental or basic in nature, thereby making every 'human a person' equal to the other. Denial or obliteration of such fundamental or core rights results in derogation of human personality, which can be described as an act of injustice.

Let us examine the concept of poverty as a concept of injustice, that is to say, the barriers in change in vector of life. This approach which perceives or

³³ The concept of personality and associated rights of individual human beings are matters of immense consideration and study in the philosophy of natural rights. Hegel and Kant took personality as essence of human being and dealt extensively within the philosophy of natural rights. They presented personality as a capacity of making individuals able to interact with each other. It is explicably implied that the equality of individual ultimately rests on an element called personality. Personality abstracts from the doctrinal framework of rights and duties. Personality obviously embodies a notion of correlativity of right and duty. It means human interactions are governed by the theory of personality on the one hand and the theory of correlativity on the other. Together, personality and correlativity are the interlocking foundation stones of a theory of liability. For detail, see Ernest J. Weinrib, 'Correlativity, Personality, and the Emerging Consensus on Corrective Justice', Vol. 2, No. 1, *Theoretical Inquiries in Law*, 2001, p.7 available at <http://ssrn.com/abstract=1273345>, accessed on 26 October 2014.

³⁴ The concepts of right and duty, within the correlativity framework, share the characteristic one actual behavior, which is generally called active act. Within this framework, right and duty describe and act where the law forbids permits or requires physical action or inaction. Weinrib (n 7).

³⁵ This state can be better illustrated by an example. In Nepal, schools are far in distance and the difficult terrain makes it hard for disable children to go to school. This situation violates the right to education of most disable children. The policy of the government is wrong and is acted upon (which constitutes an active act, here) and is the cause of deprivation of right to education of disable children. The denial of right to education makes it difficult to improve in the given vector of life. Apparently, the so-called poverty, here, is nothing but a denial of the right to education and a wrong policy of the government.

distinguishes poverty as an of injustice explicably demands: (a) a method of economic analysis of law (precepts or denominators of law such as claim, liberty, power, liability, duty, non claim, disability, immunity) and (b) a method of legal interpretation of economic activities that affect lives of people.³⁶ The right to education, for instance, is not merely a percept of law to be interpreted by the judges; it is also a matter of economic planning and discourse. Similarly, an interest charged by the bank is not merely a matter of market; it is also a matter of precept of law to be judicially dealt with. As Richard Posner has described, the economic analysis of law has two branches: the analysis of laws regulating exclusive economic activity and the analysis of laws regulating non-market activities. The former deals, beginning from the era of Adam Smith, with studies of anti-trust, tax, corporate law, public utilities, international trade laws and other market activities. The latter is mainly concerned with non-market activities such as prison, equality, punishment, rights and obligation.³⁷ The concept of poverty, however, involves both aspects of economic analysis of law, which Posner has not precisely elaborated.³⁸ When a person suffers from poverty, some of his/her rights are violated or denied, out of which some directly relate with market and others do not. The right to gain fertilizers for cultivation is directly related with market behaviour', whereas speedy disposal of case in the court is non-market behaviour. In poverty, a person's rights of varying nature viciously affect the violation of each other. The low per-capita income of a person is resulted by low productivity, which in turn is caused by the failure to purchase fertilizer in time, which subsequently makes the case disfavour the person.³⁹

³⁶ See Richard A Posner, *The Economics of Justice*, 2nd edn, Harvard University Press, 1981, p. 3.

³⁷ Posner (n 36), pp. 3-5

³⁸ The economic approach to study non-market areas, including law began prominently in the 1970s. Gray J. Becker has most vividly presented the economic approach in non-market areas such as discrimination, justice and so on. For detail, see Gray J. Becker, *Economics of Discrimination*, University of Chicago Press, 1971; As early as 1957, Gray Becker started pressing economics into non-market areas of education, fertility, slavery, suicide, adultery and soon. Gradually theories developed with firm believes that the concept of justice, privacy, equality, discrimination, public interests and many similar areas of law and justice sector could be illuminated by the economic approach. The use of economic analysis in matter of non-market behaviors gained momentum in Becker's book. Other scholars who significantly highlighted the necessity of economic analysis of non-market behaviors were Theodore W. Shultz, John H. Kagel and Ronald H. Coase.

³⁹ Loss in income due to low production of yields disables litigant to hire service of lawyer. Non-engagement of legal professional will weaken the defense of case in his/her side. This 'accrual of injustice' is directly associated with economic condition and the economic condition is directly related with access to resources..

Both, the circumventions posed by laws or prohibited economic and social conditions push persons' vector of life to the bottom-line of opportunity for prosperity. Poverty, in this sense, can be defined as a descriptive metaphor of the state of gross violation of human rights.

However, human rights activism and scholarship have yet to develop the approaches to deal poverty critically as a 'violation' of human rights'. The violation is not merely confined to 'economic and social rights'. It is rather phenomenal in nature as stated earlier. A poor person at the state of social exclusion is effectively prevented from exercising his/her worth of person, and as such his/her civil and political liberties are in a state of jeopardy.

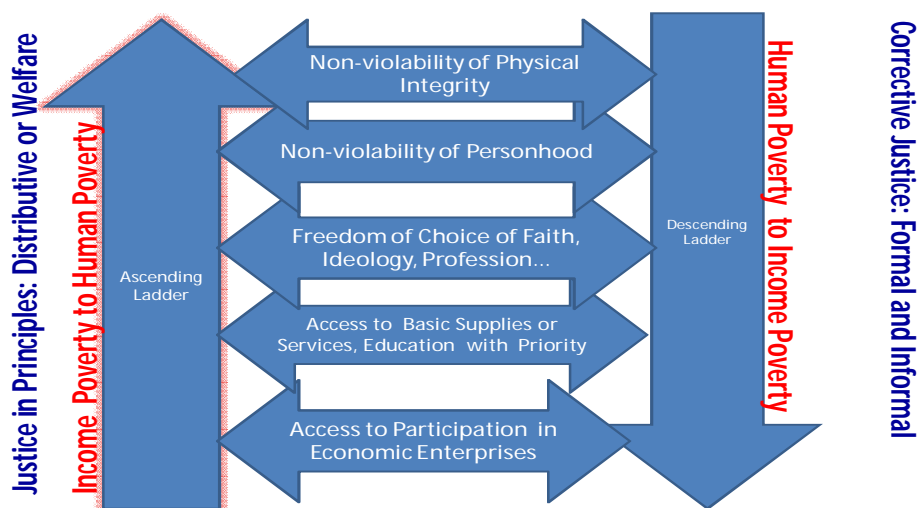
Vector of life characterised by a state of injustice: Considering from the perspective of independence (in sense of autonomy) of human life and justice against incursion of such autonomy,⁴⁰ a vector of life, in the state of an utter poverty, is characterised by elements of 'injustice' if the following rights of individuals are violated or are susceptible to violation: (a) inviolability of physical integrity; (b) inviolability of personhood; (c) freedom of choice, *inter alia*, of faith, ideology, legitimate profession, life-style, emotional belonging and pursuit of knowledge; (d) access to services, with priority to obtain education; (e) participation in economic enterprises with access to resources.

Recognition and protection of these rights, as precondition of a dignified life as well as a threshold of justice, constitute the threshold of development. A vector of life left below this development level is marked by a state of injustice, which is metaphorically known as poverty. Any kind of denial to recognize and protect such rights, or to commit encroachment any of these rights, results in derogation or obliteration of autonomy of individual because the act of impairing enjoyment of any of these rights defiles worth of person of individuals. Violation of any of these rights constitutes injustice, and if not redeemed, promptly impairs enjoyment of other rights leading to a cycle of injustice which is metaphorically known as 'deprivation, human poverty and

⁴⁰ Autonomy in most general sense refers to being of a thing in its own nature. Loss of autonomy decimates the identity of thing. Autonym, as defined by the Stanford Encyclopedia of Philosophy is an idea that is generally understood to refer to 'the capacity to be one's own person, to live one's life according to reasons, motives that are taken as one's own and not the product of manipulative or distorting external forcers'. Center for Study of Language and Information, *Stanford Encyclopedia of Philosophy*, Stanford University, 2009; The term autonomy comes from 'Latin terms *auto* (self) and *nomos*(law). Together, these two words are understood as 'one who gives oneself his/her own law'. It is the capacity of rational individual to make voluntary decision.

income poverty'. All these rights have an interface and they mutually reinforce each other. Impairment or violation of one necessarily derogates the other.

Ascending and descending ladder of 'interfacing rights': As indicted above, the value of each right is equally substantive and crucial in protecting the autonomy and worth of person in the development process. Nevertheless, the role of each individual right in enhancing socio-psychological and economic autonomy varies. The violation of right to physical integrity, for instance, hits the socio-psychological autonomy of a person severely, whereas the denial of participation in economic enterprises leads to a state of acutely income poverty. Thus, it is possible to argue that the severity of the violation of rights in ascending ladder results in poverty starting from income poverty to human poverty, whereas the violation of rights in descending ladder results in poverty starting from human poverty to income poverty. The minute analysis of the state of injustice, therefore, helps to differentiate even among those vectors of life living below the threshold condition of development. In the mechanisms of justice, these two different paradigms demand stress on different approaches of justice. The violation of rights in descending ladder emphatically stress on use of corrective justice, whereas the violation of rights in ascending ladder requires justice in principles, i.e. normative justice, than in procedures. Hence, in case of poverty resulted by income injustice, the form of justice in principles is primary model and uses the forms of distributive and welfare instruments to rectify the injustice. The following chart explains the relationship between poverty, rights and development:



Normative justice or justice in principles stresses on structural or behavioral aspects of the society and in relation with human rights, it promotes the application of equality or the benchmark of legitimacy of all interactions

between individuals, and individual and the society. To break the vicious cycle of social exclusion and lack of capability that reinforce the 'regressive status quo' and to assert rights and want of resources and income, scheme of stringent application of equality principles is mandatory.

The role of justice mechanism becomes important to secure this objective. The principles of equality need reinforcement through the mechanisms of justice. However, the formal mechanism of the State alone is not adequate for this. Formal mechanism generally focus on corrective approach, the objective of which is confined to correct obvious wrongs resulted by unauthorized actions of the State or individuals. The nature of corrective justice is, thus, more transactional between two individuals or the state and individual. However, the informal justice mechanism surpasses the transactional relation and tends to embrace the structural behaviors of society as its subject. Within the corrective justice regime, the informal justice is an instrument of restructuring the social behaviors or structure. As a matter of fact, the informal justice mechanism tends to relate corrective justice with normative justice.⁴¹

Income Poverty and Monopolization of Natural Resources by the State

Occurrence of the income poverty can be attributed to the denial of access to skills and participation in economic activities. In ancient history of societies, the aristocrats and courtiers⁴² enjoyed claims over lands to the complete exclusion of common people. Common people survived either as tillers or as slaves. The exclusion of the common people from rights to hold land and other resources was effectuated by denial or degradation of the worth of person of common people. By defining common people as slaves or inferior, they were deprived of their human persons and made unable to hold rights of ownership and possession of land. Denial of personhood to the common people was intentionally and strategically designed as an instrument of legitimizing the practice of depriving the common people of ownership in property. The exclusion was, then, legally institutionalized. The denial of human identity to

⁴¹ The interest of resolving dispute by the application informal justice mechanism is not limited to the object of convenience alone. The desire of parties to effect changes in behaviours of the society is implicit, but prominent. The informal justice mechanism is, thus, implicitly associated with mission of reconstruction of the traditional structure of society. The social sanction attached to the resolution of the case is a prelude to the change in the behaviours of the society.

⁴² In ancient Roman Empire, the patricians exclusively enjoyed ownership over the lands. Similar was the history in Greek city states.

common people was made a basis of privilege of holding lands exclusively by aristocrats.⁴³ This was true in all societies.

In feudalism which was pervasive all throughout middle age and until the era of industrial revolution, the ownership over the land was an exclusive right of the landlords, courtiers and the State's power wielders. Institutions such as the State, churches, temples, monasteries, and mosques also claimed ownership over the lands. The belief in most societies concerning the land and others assets, attached to the land, was that right of owners was absolute. On the other hand, the land was occupied by a very few people as a right based on their so-called supremacy in social position or status. The historical root of poverty has, therefore, been found in system of discrimination and exclusion based on perceived hierarchy of social origin, caste, religion, and other similar traits. The legacy of the exclusive holding of rights over land by few people has been protected by law through various institutions⁴⁴ established or protected by laws. The recognition and protection of absolute rights over the land was responsible for raising the social position of some people as superior and reducing that of farmers to inferior. The land system was used to determine the social position of a person. A person who held lands in mass was socially superior. The caste system in south Asia has its roots in the system of rights on lands. The farmers who had been engaged in cultivation of lands were reduced to workers and had no social position. The social position was used as a 'criteria' for holding ownership of land. Farmers were not allowed to have a social position.

This is how the prohibited economic and social conditions were created. As long as the farmer was allowed to engage in tilling and producing the land, he/she was able to generate livelihood. Once evicted from the land, the person was reduced to a state of pauperism and social exclusion. The vast poverty of south Asia was, thus, artificially created in the past. The eviction from the

⁴³ Aristotle opined that slavery was natural institutions. Roman empires described the non-Romans as uncivilized and barbarians. Plebeians were considered inferior to patricians. Citizens and slaves, patricians and plebeians and woman were arbitrary classification of people, which were fully institutionalized by laws. The claims over natural resources were exclusively enjoyed by some people by relegating the worth of persons of mass. It was a political act. Hence, poverty has a root in political injustice. The control of economic behaviours by political institutions is a historical cause of poverty among vast people.

⁴⁴ The laws of Nepal, until very recent past, used to recognize and protect institutions such as *Birta*, *Guthi*, *Raiker*, *Bethi*, *Kipat*, and so on. These institutions were established by the State through law in order to protect the interest of *jamaindars*, *taludars*, *bhardars*, *choutaraiyas* and employees of the State.

agricultural farming pushed people to find menial works other than cultivation, and some of these professions were defined as dirty and filthy. The people who engaged in these professions were then defined as untouchable, which is the worst form of social exclusion.

The concept of absolute ownership over the land is antagonistic to the concept of equality of persons and recognition of the worth of all persons, without discrimination. The absolute and exclusive ownership over the land by landlords, aristocrats and courtiers was responsible for establishing discrimination and subordination of vast majority of people. The discrimination and subordination, in turn, was fully protected by law as it was legally institutionalized. Inequality was, in that way, a creation of social as well as legal system.

Injustice springs out of violation of equality, or a social or legal system that generates a prohibited social or economic condition. The social exclusion which degrades the worth of person is an outcome of the worse state of inequality, which consists of deprivation of social position as well as degradation of the recognition of person. Inequality, in this sense, is a 'structural or systematic institution of stratification'.

The concept of absolute ownership and discriminatory distribution of the land has still been a source of deprivation of majority of people in Nepal. The theory that the land is a 'common heritage' of all citizens has been effectively violated by States even today. In most of the developing countries, lands have been monopolized by the State by holding direct and absolute control over them or by letting few people not engaged in farming or other productive enterprises to exclusively enjoy them. Land constitutes the source of all natural resources, such as water, plants, minerals, fuel, and animals. Exclusive occupation of lands by few creates a disproportionate system of distribution and their holding by State or any other agencies or individuals for non-productive purposes exclude vast population from right to participate in economic enterprises. The income poverty, thus, springs out of wrong or ill management of the land and attached resources.

The following vicious cycle justifies how income poverty becomes institutionalized by the tendency of the State or a few people to have exclusive or absolute of rights over the land: (a) the concept of absolute ownership over the land, whether by the State or Individuals, creates perpetuation of the traditional dominance of some people over the land, to the exclusion of a vast number of population; (b) the exclusion of larger population from the land inhibits the prospect of innovative skills and the knowledge of production,

thus, confining the importance of land in subsistence economic activities; (c) the limitation of productivity of land reduces the prospect of market, thus, inhibiting economic activities among people; (d) the growth of population, accompanied by lack of market activities, pushes people to the state of further marginalization; (e) lack of productivity, market activities and growth of population among the mass of population, on the one hand, and the concentration of wealth in the hands of few people, on the other hand, pushes the society into a state of conflict, where the poor fall in the trap of social exclusion as well as insecurity. In this war, income poverty causes human poverty as well as human insecurity.

Denial of Equal Access to Natural Resources and Justice in Principles

Denial of equity based participation in economic enterprises and access to natural resources constitutes a state of denial of justice in principles and can be encapsulated as subordination, social exclusion and discrimination. The state of injustice can be prevented or remedied by fair and equitable distribution of economic opportunities and market access. The equity-based distribution of economic opportunities and access to market, in turn, requires the State to treat the natural resources as 'common heritage of the people'.⁴⁵ This doctrine implies that neither state nor any individual has absolute ownership over the land and natural resources. The State's role in natural resources is limited to the regulation for the benefit of general welfare and well being of the entire population. Either by introducing the system of 'ceiling of land for occupation or by introducing the cooperative use of the land', the State can institutionalize the equity-based distribution of natural resources.⁴⁶ The relation between individual and State is regulated by the theory of loyalty and security. The

⁴⁵ Egalitarian and natural theories believe that all individuals are born free without any given social or economical position. Individuals are capable of taking social position of their choice. The professions chosen to carry on determine their positions in the society. The difference of people in the society is characterised not by difference in worth of person, but by nature of their works and productivity. This theory recognize an argument that natural resources are available to utilize efficiently, but not to absolutely own without use. The nature of right over the resource should be determined by its use. Land cannot be held for uncertain period of time without being utilized.

⁴⁶ In Nepal, the *Land Reform Act* 1964 (2021) and some other laws were developed in the line of equity-based distribution of land in Nepal. However, their enforcement was tainted and blurred by the system of governance which could not be transformed into a modern system. The land, thus, became a matter of conflict in Nepal. It was one of the sources many conflicts in Nepal.

individual, by agreeing to become a citizen of a given State, has agreed to undertake an obligation to defend the State and follow its laws with full respect. The State on the other hand, for receiving loyalty and obedience to its laws from citizens, has made commitment to provide welfare and security of life, dignity and independence. Since everyone's loyalty to the State is same and equal, the doctrine implies that 'all citizens have equal rights over the land and natural resources'. Hence, both the action of unequal distribution of natural resources or inaction to redeem discrimination, if it exists, constitutes a denial of justice in principles'.

Eradication of poverty, thus, means a right-based scheme of recognizing, respecting and protecting the equal worth of person of all citizens, and the equity-based distribution of claims on natural resources. The development endeavours of State have to focus on these fundamental aspects of human life. Unfortunately, the planning and policy making processes of developing countries like Nepal have been relentlessly ignoring these aspects.

General Good Theory and Utilization of Natural Resources

The earth and its properties are not created by people. The occupation of the land and natural resources, therefore, cannot be held permanently, irrespective of their improper utilization. The equity based distribution of resources is hindered not by their inadequacy, but by improper policies, laws and development plans for utilization of natural resources, or by lack of desirable 'productivity' on the part of users. In developing countries, the land has been occupied by a smaller section of population and rests are excluded. The productivity of the land is limited, which causes scarcity in production. The poverty is, therefore, an artificial creature, which springs basically from 'denial of rights to equity-based distribution of resources'. It can, thus, be addressed only by distribution of rights and their protection to enjoy resources by all people. The universal human rights regime in this regard has plainly established rules which are endlessly violated by States.

The Charter of the UN fully recognizes that disparity among people is an outcome of the ill-distribution of resources. Similarly, Universal Declaration of Human Rights and other instruments of human rights duly recognize rights of people have equitable share in the natural resources. These rights are, however, not enforced by nations. The developed countries have persistently resisted assuming obligation to address the massive poverty in the world placing an argument in front that they are not accountable to generate it. The national

governments argue that they have constraints in resources. The wealthy population argue that the wealth belonging to them is their earning. The laws enforced by the States to protect property rights without regard to the social structure based on degradation of the equity based distribution system of resources are neither supported by rationality nor by morality. The state of poverty can be addressed solely by restructuring the existing social structure, which may create conflict between citizens. However, the States must be prepared to take the risk to implement 'rational policies of equality' in any cost.⁴⁷

Change in the Vector of Lives as a Priority

The right to physical integrity and worth of person are basic characteristics of human dignity and security. Thomas Hobbes has said that the social contract was considered important by human beings to protect their rights against violence and thus to safeguard of the physical integrity of all human beings. The right to non-violability of physical integrity and personhood are interlocked. The recognition and protection of personality of an individual makes his/her physical integrity protected, and the protection of physical integrity automatically preserves the personality' of individual. The right to freedom of choice is a means of articulating personality of individual in which embodies an element known as autonomy. The autonomy is a source from which the legitimacy or sanctity of opinions and decisions of individuals flow out. Rights of the individuals to access their supplies and to participate in economic entrepreneurship spring from tacit contract between the State and individuals. In this contract, both have committed to protect each other. The citizens have undertaken obligation to defend the sovereignty of the state, and in lieu of that, the State has committed to look after welfare or well-being of every citizens. The guiding principle to be applied by the State while fulfilling this obligation is the virtue of equality, which embodies two connotations: (a) offer to carry out equal treatment to every citizen in matter of his/her 'being a member' of the society and (b) let every individual choose his/her pursuit of occupation and gain from it without any disregard to his/her work. Equality does not offer a trait of sameness to all.

Looking at these important attributes of human life and autonomy, every individual has right of being (a) fully protected against crimes or inflictions,

⁴⁷ Campos (n 5).

even against those not defined as crimes; (b) recognized as an individual with full respect for pursuit of his/her unique mode of life; (c) secured in exercise of articulating faith in the form of culture or taboos; (d) provided a platform for continuous learning; (e) encouraged, with full protection, to engage in economic or market activities.

These are the basic minimum rights of an individual. Deprivation of any of these rights will push an individual to a state below the threshold and ultimately to a state of social exclusion. These are also the indicators that need to be applied in order to investigate the level of seriousness or callousness of the state of injustice or poverty. This approach is based on 'modality of poverty analysis using human rights principles'.

This theory operates for examination of: (a) law (any law that pushes a person below the threshold condition of development would amount to an illegitimate law); (b) policy (any policy that disregards these basic minimum rights would either be socially unjust and irrational, or immoral); (c) anti-human rights activities of the States as well non-state actors.

Conclusion: Poverty as an injustice' is a public wrong

The theory that believes poverty is an injustice that springs out of denial or violation of the rights concerning development threshold. It emphatically recognizes and stresses that (a) every individual while enjoying their rights must be careful of not impairing the public good;⁴⁸ (b) the State has no innate goals of its own, independent of people; (c) the State's arbitrary control of natural resources, by unnecessary, false or hierarchal regulations, results in 'unproductive exploitation or wastage or misuse of wealth thus pushing people to the state of want and destitution;⁴⁹ (d) since the natural resources are not created by human being, the principle of absolute ownership over natural resources by someone excludes others, thus pushing towards the state of want

⁴⁸. Immanuel Kant, in his treatise called 'Foundations of the Metaphysics of Morals (1785)', requires individuals to pay respect for responsibility of exercising his/her autonomy (freedom) solely for the sake of good of all independent of other incentives. Kant argues that individual autonomy within moral framework is an ability to impose objective moral imperatives onto oneself. The eastern philosophy - Hinduism and Buddhism, both emphatically assert the necessity of good of one, for the good of all, i.e. Sarbejana hitaya sarbajana sukhaya'.

⁴⁹ John M. Cobin, 'Allodialism as Economic Policy', vol. 3, *Commentaries on Law and Economics*, 1999 available at http://papers.ssrn.com/sol3/papers/cfm?abstract_id=186934, accessed on 26 October 2014.

and deprivation⁵⁰; (e) poverty is an outcome of denial or deprivation of people's right to equitable and rational enjoyment of natural resources.

The principle of poverty as an injustice requires States to handover the possession of the natural resources to citizens equitably by laws with restrictive covenants.⁵¹ This theory is based on normative values that (a) the natural resources being common heritage, excludes the concept of absolute private ownership; (b) the injustice can be addressed by recognizing a modality of 'justice in principle' that natural resources can be held in a spirit and scheme of 'cooperative collectivization'; (c) the right to hold and use the natural resources should be determined by skills and knowledge of possessors; (d) the exclusion of individuals from natural resources should be prohibited.

The state of injustice caused by the denial or violation of minimum rights, necessary for a human being to survive as a human individual, can be defined as violation of human rights. The vector of life under the 'threshold condition' is described by economics as absolute poverty. Nonetheless, the term absolute poverty is less explicit to denote dignity. The theory of poverty as an injustice emphasizes the elements of human dignity. From this point of view, a life under the threshold condition is a state of 'gross injustice', which is unacceptable for any human civilization, morality or tradition. The state of 'gross injustice' can be characterised by (a) a state of 'subordination' of human personality, thus subjecting to a condition or vulnerability of unlimited, inhuman, degrading, and slavery like treatment of persons; (b) a state of social exclusion and ensuing trauma, caused by hardship of life and stigma attached thereto; (c) a state of criminalization of incapability to interact with social values and market; (d) a state of impunity of violence. Any law or system of justice failing to play role in preventing poverty is thus a 'system of institutionalizing the gross injustice'.

A fair and progressive system of law and justice, therefore, demands the fulfilment of the following standards:

- a. Linkage the planning of development endeavours with basic rights of the people;
- b. Respect to the rights of people as a primary indicator of the pro-human rights development endeavours;

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

- c. Protection and promotion of human dignity and security as an object of development, law and justice;
- d. Drawing legitimacy of development from law and justice and *vice versa*.

Development (as a vehicle for fulfilling the realization of rights of individuals), law (as a framework of normative guidelines of development endeavours), justice (as values of rights of persons) together constitute an interface and mutually provide a regime of legitimacy and sanctity. Poverty or gross injustice occurs when the 'interface of development, law and justice' is negatively affected or broken. Therefore, human rights jurisprudence should essentially be connected with the regimes of development planning and the endeavours of its mplementation.