For A Set of Fundamental Economic Rights in India

—Prabhat Patnaik*

The Keshab Basu Memorial Lecture, National University of Juridical Sciences Kolkata, 16 March 2019

I. A Contradiction Underlying the Constitution[1]

Underlying the Indian Constitution is a basic contradiction. Dr. Ambedkar himself had alluded to this contradiction in the following oft-quoted words during his concluding speech to the Constituent Assembly.

"On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."[2]

What Ambedkar had referred to as a contradiction in the life of democratic India was in fact a contradiction within the Constitution itself, which provided for democracy based on one-person-one-vote in the political terrain, but did not make any such provision for equality in the economic terrain. The

---

* Professor Emeritus, Centre for Economic Studies and Planning, School of Social Sciences, Jawaharlal Nehru University.

1 I am very honoured at the invitation to deliver the XIIth Keshab Chandra Basu Memorial Lecture. I am grateful to Mr Partha Sarathi Sen and Justice Joymalya Bagchi for their remarks on the occasions, to Vice Chancellor Justice (Retd.) Amit Talukdar for his most generous hospitality, to Sudev Singh Juneja for his research assistance and to an anonymous referee for valuable comments.

2 *Constituent Assembly Debates*, 25-11-1949 speech by Dr B.R. Ambedkar, available at <http://cadindia.clpr.org.in/constitution_assembly_debates/volume/11/1949-11-25> (accessed 22-4-2019).

economic goals enshrined in the Constitution were put under the "Directive Principles of State Policy"; but these being only "Directive Principles" were not binding upon the State.

But this was not just an act of omission. Underlying it was a certain economic understanding which was flawed from the very outset. While the Constitution, in Part III, did not include economic rights, it instituted right to property as a fundamental right, which was essentially a demand of the rich. In fact the right to property came immediately in the way of effect in egalitarian land reforms. And when the judiciary did allow the take-over of land for distribution, it insisted upon compensation at "market value", which was burdensome on the exchequer. To overcome this hurdle, the Ninth Schedule of the Constitution was created where land reform legislations, to start with, were placed in order to put them beyond judicial intervention[3].

Much has been written on the misuse to which the Ninth Schedule has been put in subsequent years, a misuse having nothing to do with the agrarian reforms themselves; but the Ninth Schedule and its misuse flowed from the contradiction underlying the Constitution itself that was mentioned earlier, namely, its unwillingness to concern itself, except in the form of pious wishes in the Directive Principles, with effecting socio-economic equality on a par with political equality.

The Right to Property enshrined in the Constitution, though used in the beginning for defending landlords' property against egalitarian land distribution, was of course more far-reaching in its scope; it was to clear the way for the pursuit of a capitalist trajectory of development. In fact the institution of the Right to Property, being a common point of interest between the landlords and capitalists, was a manifestation of the coming into being of a bourgeois-landlord alliance shortly after independence, which was against the thrust of the anti-colonial struggle that had talked of "land to the tiller".

The ostensible economic justification for defending both capitalist property and landlord property through the Constitutional guarantee of the Right to Property, was the need for mobilizing *all* existing social groups for bringing about development, not just the capitalists who could contribute to the process, but even the landlords, provided they ceased to be "absentee" landlords and converted themselves into landlord-capitalists in the manner of the Prussian junkers. The view was advanced that the economic inequality that such a trajectory might engender could be restricted through State intervention; that India would witness not a predatory capitalism but a controlled capitalism where the capitalist drive would be harnessed for growth while its immanent inequalizing tendency would not be allowed to manifest itself.

---

3 Rajeev Dhavan, *The Constitution of India : Miracle, Surrender, Hope* (2017).

But the fear that things were not working out in this manner and that economic inequality was actually increasing even under the regime of planned development was already apparent by the end of the fifties, which made Jawaharlal Nehru set up the Mahalanobis Committee[4] to examine the increase in inequality.

In short the institution of political democracy on the one hand and the implicit vision of capitalist development, including junker capitalism in the countryside, on the other, which underlay the listing of the Right to Property as a fundamental right were two contradictory aspects of the Indian Constitution, since the latter is necessarily imbued with an inequalizing tendency. The Indian Constitution in short straddled two opposing tendencies, one of which would necessarily subvert the other.

II. The Contradiction of Neo-Liberalism and Democracy

This contradiction between political democracy and the trajectory of economic development has become particularly sharp in the era of neo-liberalism which represents a total jettisoning of the idea of controlled capitalism that had been visualized earlier. The Indian economy, like other economies around the world in this era, has become open to freer cross-border movements of goods and capital, including of finance. This has had a directly constricting effect on political democracy; it has also caused a massive and unprecedented increase in income and wealth inequality in the country, and even an absolute increase in the incidence of hunger and poverty, whose adverse impact on democracy is obvious.

Let me spend some time on each of these two aspects. The directly constricting effect of neo-liberalism on democracy arises for the following reason[5]. When finance is globalized, free to move all over the world, but the State remains a nation-State, then the State necessarily has to pursue policies which are to the liking of finance, in order to prevent its sudden outflow that would precipitate a financial crisis for the country. Hence as long as the country remains caught in the vortex of global financial flows, the State pursues the same policies no matter which government comes to power.

This fact strikes at the very root of democracy since democracy is predicated upon the premise that people can choose between alternative programs and agendas offered by different political formations. If all political formations offer the same program, or if, even when they offer different programs before being elected, they all pursue the same agenda upon being elected, namely the

4 P.C. Mahalanobis Committee, Report on Distribution of Income and Levels of Living, 1964.

5 Prabhat Patnaik, "Neo-Liberalism and Democracy", 49 Economic and Political Weekly (12-4-2014).

agenda favoured by globalized finance, then the people's choice becomes meaningless; this is a subversion of democracy.

A recent example of this is Syriza[6] in Greece which came to power promising something very different from what earlier governments were doing in the economic realm; but it ended up doing exactly what earlier governments had been doing, because it remained stuck within the same financial regime as earlier. This effective abridgement of democracy has been manifest in India since the 1990's, as several different governments, the United Progressive Alliance, the United Front , and the National Democratic Alliance, have been following exactly the same economic agenda, the one approved by international finance capital.[7] In other words, even though the people may exercise their franchise once every so often, this has little significance since all governments pursue the same policies, at least in the realm of the economy. The *nominal* sovereignty of the people in this case camouflages the *real* sovereignty of international finance capital.

The neo-liberal regime is also necessarily accompanied by an increase in income and wealth inequality. The reason is that the Neo-liberal State, which pursues policies demanded by international finance capital, no matter which government is in power, also withdraws the support that had been given under the earlier *dirigiste regime* to the petty production sector. This is a necessary accompaniment of neo-liberalism, and it exposes this sector to a process of what Marx had called "primitive accumulation of capital".[8]

Primitive accumulation here takes both a "flow" and a "stock" form. The former entails a squeezing of the producers' incomes, while the latter entails the taking over of their assets, especially land, by the capitalist sector at throw-away prices[9]. The distressed petty producers, including above all the distressed

---

6 Syriza is a left wing political party which, at the time of writing this paper, was the largest party in the Hellenic Parliament. Its Chairman Alexis Tsipras serves as Prime Minister of Greece. It was elected on a platform which included free electricity, meal subisidies, housing guarantees, increased labour protections and rights, and to combat rampant tax evasion.

7 *Supra* note 3.

8 Karl Marx, C*apital*, vol. 1, part VIII (first published in 1878). For a further discussion on primitive accumulation of capital by the author, *see* Marxist, XXXIII, 4, The Concept of Primitive Accumulation of Capital, October-December, 2017 available at <https://cpim.org/content/concept-primitive-accumulation-capital> (accessed 25-4-2019).

9 Even when the price offered does not appear to be unduly low, not all those who traditionally derive their livelihoods from land and who can therefore be said to have a customary right to the land, are compensated; only some recognized as legal "owners" are. In land takeovers for "development projects" for instance, the tenants and agricultural labourers hardly get any compensation i.e. their customary rights on the land are never recognized. In economic terms what this means is that the value of the land is calculated as the discounted sum of the stream of future economic surpluses that the land is expected to yield, not as the discounted sum of the future stream of the outputs that the land would yield. This still amounts to a process of primitive accumulation of capital, in the sense of entailing the dispossession of numerous producers with customary rights over land without any compensation.

peasants, flock to the urban areas in search of jobs; but as jobs are virtually non-existent, they end up swelling the labour reserves and pulling down the real incomes of the *entire* working population. In India for example between 1991[10] and 2011[11], which are both Census years, the number of "cultivators" as defined by the Census has gone down by 15 million; they have either become "labourers" within the agricultural sector itself or migrated to the cities. Clearly in either case their per capita real incomes have gone down; but such migration to the cities by a sizeable number of them has also exerted a downward pressure on the per capita real incomes of *other segments* of the working population.

This stagnation in the per capita real incomes of the working population is accompanied however by a high rate of growth of labour productivity.[12] This has the effect of raising the share of economic surplus in total output and hence income inequality. Chancel and Piketty's study of income inequality in India[13] based on income tax data shows that the level of inequality, measured by the share of the top 1 percent of households in the total incomes of all households is higher today than at any time since the Income Tax was introduced in 1922. What is more, it has increased from 6 percent around the mid-1980s to about 22 percent today.

Such an increase in income inequality generates and is in turn generated by the increase in wealth inequality, which, as the Credit Suisse data show, has been quite phenomenal in India of late, with the top 1 percent of households now owning almost 60 percent of total household wealth.[14] *Such an increase in wealth and income inequality, as is now almost universally recognized, is quite incompatible with political democracy.*

Neo-liberal capitalism has not just increased wealth and income inequality in India; it has actually worsened absolute poverty, a claim that may appear incredible at first sight. But National Sample Survey data show that the percentage of persons falling below the benchmark figure of 2200 calories per person per day in rural India which officially defines the poverty line,

---

10 Office of the Registrar General & Census Commissioner, India, 1991 Census Data, Population Enumeration Data, Workers Classified by Age, Industrial Category and Sex.

11 Office of the Registrar General & Census Commissioner, India, 2011 Census Data, Population Enumeration Data, Workers Classified by Age, Industrial Category and Sex.

12 Asian Productivity Organisation, APO Productivity Databook: 2015, (2015) available at <https://www.apo-tokyo.org/publications/wp-content/uploads/sites/5/APO-Productivity-Databook-2015.pdf> (accessed 25-4-2019) (The percentage rate of Labour Productivity Growth in India was 3% from 2000-2005, and 6.7% from 2005-2013).

13 World Inequality Database, Working Paper Series, 2017/11, "Indian Income Inequality 1922-2015: From British Raj to Billionaire Raj?", Lucas Chancel and Thomas Piketty (November 2011).

14 Credit Suisse, Global Wealth Report 2018, (October 2018).

has increased from 58 percent in 1993-94 to 68 percent in 2011-12[15]. The corresponding figures for urban India where the benchmark figure for defining poverty is 2100 calories per person per day are 57 percent and 65 percent respectively. Clearly hunger and poverty are on the rise.

Among the reasons for this rise, an important one relates to the privatization under the neo-liberal regime of essential services like education and healthcare. If the neo-liberal regime as a whole has been marked by growing hunger and poverty, the crisis of this regime that has set in after 2008 has actually made matters worse for the working people.

The incompatibility between political democracy and such growing inequality, and distress on the part of the vast masses of the working people, can take many forms. The form noted earlier, where the democratic routine continues but government policies are dictated by globalized finance capital cannot go on *ad infinitum*. People's anger gets built up over time; and when things become worse, this anger becomes even greater. Another form then begins to appear where again the democratic routine consisting of elections continues, but people are distracted by a discourse shift, encouraged by the globalized corporate-financial elite, which is marked by growing communalism, jingoism and "Hindu supremacism".[16]

Such a discourse shift prevents the people's anger at their worsening material conditions of life from affecting their electoral choice; they vote under the influence of inflamed communal passions rather than for an economic agenda for material improvement. The threat of fascism of a new kind, different from the 1930's in the sense that it does not necessarily do away with the trappings of electoral politics but effectively corrodes democracy, begins to loom large.

The contradiction underlying our Constitutional order may spawn alternative scenarios; but each of these entails a *de facto* subversion of democracy. It is in this context that a revision of the Constitutional arrangement so that this contradiction is overcome, becomes necessary. And this entails the introduction of a set of universal, justiciable, fundamental economic rights, on a par with the existing fundamental rights.

III. The Need for Instituting Economic Rights

One can think of many such rights but I shall focus here only on five economic rights; the right to food at an affordable price; the right to

[15] Utsa Patnaik, "Poverty Trends in India 2004-05 to 2009-10", Economic and Political Weekly, vol. 48, no. 40, October 5 (The author has kindly made available to me the figures for 2011-12).

[16] *Supra* note 3.

employment, failing which the State must pay an unemployment allowance that is a sufficiently high proportion of the appropriate wage rate; the right to free, publicly-funded, quality healthcare, through a National Health Service; the right to free, publicly-funded quality education for all up to the Secondary level, and after that for those wishing to pursue further studies; and the right to adequate old-age pension and disability benefits.

Two objections will be raised immediately with regard to such rights. The first would state that any such move would disrupt the functioning of the (neo-liberal) economy, and must therefore be eschewed. Clearly however such an argument lacks legitimacy. The preservation of the neo-liberal order cannot be given a higher priority than the empowerment of citizens that gives meaning to our democracy. In fact the economic order must be such that the citizens become empowered. The need for empowerment cannot be sacrificed for the preservation of a particular order; for doing so would precisely mean a subversion of democracy, the very *denouement* we wish to avoid.

To say that the manner of introducing these rights should be such that the functioning of the economy does not get too severely jolted during the transition, is to state the obvious; but the *paramount need* for introducing such rights cannot be overlooked by any means.

The second argument against my view would take a different position, namely that there is no need for introducing any such rights since if we maintain high GDP growth, then empowerment of the people would get automatically assured. Not only however has this not happened, indeed the very opposite has, but there is no question of its ever happening, *not even with a stepping up of the GDP growth rate.*

The reason is obvious: the assault on petty production that neo-liberalism entails results in arrested growth in this sector, especially in the peasant agriculture sector, such that per capita food grain production scarcely increases over time. In fact, per capita foodgrain production fell between 1990-91, the eve of the introduction of neo-liberal policies and 2016-17 (both good crop years and hence comparable).[17] Since any empowerment of the mass of the working people would mean an increase in their per capita real income and hence an increase in their per capita demand for foodgrains, it would give rise to inflation if it occurred in such a situation. And inflation is anathema for finance capital for it lowers the real value of all financial assets. Hence the per capita real income of the working people will not be allowed to increase (through the imposition of appropriate income deflationary policies upon them) to keep inflation at bay in a situation of non-increasing per capita

[17] Ministry of Agriculture & Farmers Welfare, Department of Agriculture Cooperation & Farmers Welfare and Directorate for Economics & Statistics, *Pocket Book of Agriculture Statistics 2017.*

foodgrain output. An increase in the GDP growth rate therefore, *unless it is accompanied by an increase in the growth of the output of the peasant agriculture sector,* will not increase the per capita real income of the working people, and hence only increase income inequality.

Against the above argument it may be claimed that foodgrains need not be all produced at home; they can always be imported. But even if foodgrains are imported, in the event of the demand for them outstripping domestic supplies, and the country somehow manages to find the foreign exchange required for such imports, nonetheless *some* inflation would still be unavoidable, even for providing the signal for the need to import. And to bring down such inflation, income deflationary policies will be imposed upon the working people which would once again come in the way of their empowerment.

Hence such empowerment cannot be assumed to follow as a mere by-product of high growth under a particular regime. It has to be Constitutionally mandated through the institution of economic rights, and an appropriate economic regime, not the spontaneously inequalizing neo-liberal one which currently exists, has to be put in place for it.

The transition from the current regime to such an appropriate regime would no doubt be marked by difficulties, but these difficulties cannot be an excuse for keeping the working population disempowered forever. And in any case those who argue that their condition will automatically improve under neo-liberalism should not expect any serious transitional difficulties if economic rights are introduced under this regime itself.

IV. The Question of Resources

The question that would worry most persons when economic rights are mentioned relates to how the resources needed for it can be mobilized. Let me therefore spend some time over it and provide some figures that are relevant in this context[18].

It has been estimated that for providing employment for 100 days per household to 37.5 million urban households (those living in towns with population less than 1 million), the total cost, including both wages and material costs (in the ratio 50:50), at wage rates which vary according to skill-level, Rs.300 per day for the bottom 30 percent, Rs. 500 for the next 30 percent and Rs. 700 for the next 20 percent (the top 20 percent are assumed not to avail of such work) will be Rs. 2.8 lakh crores per annum. In rural areas if

18 In the following section I have relied heavily on the background research done by several scholars that has gone into the preparation of the document “Reclaiming the Republic”, 2019. It can be found at <www.reclaimingtherepublic.in.> (Disclosure: The author was a “core member” of the team which prepared the document.

MGNREGS is actually made to provide 100 days of employment to every job-card holder at a wage rate of Rs. 200 per day then the total cost would be Rs. 2.3 lakh crores. The two schemes together, urban and rural, add up to Rs. 5.1 lakh crores. Since Rs. 60,000 crores is the current allocation for MGNREGS in the central budget, the additional amount required is Rs. 4.5 lakh crores.

We have taken only 100 days of employment per household, and that too only for job-card holders in rural areas, and in towns below 1 million population in urban areas. This is not the same as ensuring a right to employment for every individual citizen which is our aim. But there will be no more than two employment-seeking individuals per household (children will be in school anyway in the new situation), and the number of days of actual employment demanded, which will be *in addition* to the employment they already have (and this will increase because of the institution of the other rights), will perhaps be less than 100 on average. In fact in urban areas, it is unlikely that two individuals in 80 percent of households will be demanding 100 days of employment each. Considering all these factors which act in contrary directions, we can perhaps take this figure of Rs. 4.5 lakh crores as a first approximation to the amount that needs to be provided for instituting the right to employment as such.

As regards food, there is already a substantial food subsidy that is provided in the budgets of the Centre and the States. The universalization of the distribution of cheap food, considering that there will be a certain amount of voluntary drop-out, is unlikely to require more than an additional Rs.1 lakh crores.

As regards pensions, it has been estimated that 12.8 crore persons above the age of 60 will need to be catered to. Providing pensions, entirely on a non-contributory basis, at the rate of Rs. 2000 per month to about 12.8 crore persons above the age of 60, would cost, in round figures, an additional Rs. 3 lakh crores.

On education and health, instead of making specific estimates, let us assume that 6 percent of the GDP should be provided for the former, as suggested long ago by the Kothari Commission[19], from the coffers of the State, and 3 percent of GDP should be provided for the latter, which is a benchmark suggested by many, from the coffers of the State. This would require the State's increasing its education expenditure by 2 percent of GDP and its health expenditure also by 2 percent of GDP. These two together add up to Rs. 6.6 lakh crores.

The total of all these amounts comes to Rs. 15.1 lakh crores, or roughly 9 percent of GDP. True, there are many expenditures we have left out; but,

[19] D.S. Kothari Commission, Report of the Education Commission, 466 (29-1-1966).

on the other hand, while our concern is with additional expenditure, we have not reckoned with several State Government expenditures being incurred at present which are quite substantial under many of these heads. Besides, the expenditure on some of these heads *ipso facto* leads to the achievement of other objectives. For instance, instituting an authentic right to education requires large-scale construction of school buildings, which also generates employment and hence serves *ipso facto* to realize the right to employment. Adding up, as we have done, the requirements calculated for different heads therefore amounts to an overestimation. Assuming on balance that these various over-estimations and under-estimations cancel one another, *we shall take Rs.15 lakh crores as the additional sum required at present for realizing these five basic economic rights.*

How is this sum to be raised? Let us assume that it should not be raised through any increase in the fiscal deficit, not because an increase in this deficit will have inflationary consequences as is often claimed, but because it increases wealth inequality compared to a situation where an equivalent amount of public expenditure is tax-financed.

There is plenty of scope for raising this sum through wealth taxation. In India, shockingly, there is virtually no wealth taxation worth the name; and wealth inequality has been increasing phenomenally. A host of economists across the world have been demanding higher wealth taxation everywhere to reverse the growing inequality under neo-liberalism which they rightly see as being inimical to democracy; and even the Davos summit (2019) has expressed concern over growing wealth inequality. Wealth taxation in short is desirable *per se*, quite apart from its necessity for meeting welfare expenditures.

To be sure, any wealth taxation has to be a comprehensive one, complemented by taxes on gifts and transfers which would otherwise become instruments for evasion. But assuming that such checks are in place, wealth taxation, precisely because it hardly exists at present, can be a potent means of resource mobilization.

According to the Global Wealth Migration Review 2018[20], the total net worth of only billionaires in India amounts at present to Rs. 557 lakh crores. A 1 percent tax on the wealth of just these billionaires will get, in round figures, Rs. 5.6 lakh crores per annum.

Wealth taxation has also got to be supplemented by inheritance taxation. In fact inheritance taxation is perfectly in sync with the ideology of capitalism. This ideology holds that capitalists owe their wealth to some special talent which they possess. But then there is no reason why their children, until they too have displayed these talents, should also be the possessors of such wealth.

---

[20] Afr Asia Bank and New World Wealth, Global Wealth Migration Review, April 2018.

If we assume that every year 5 percent of the total wealth of these billionaires gets transferred to their children, or other legatees, as inheritance, then even a modest taxation of one-third on such inheritance would fetch Rs. 9.33 lakh crores. *Just these two taxes in short, and that too levied only on billionaires, will be quite enough to finance the creation of a welfare State in India in which every citizen will enjoy a set of economic rights.*

Of course we have been talking here only of money sums, while one has to consider the logical problems that may arise if taxation of a *stock* (wealth) is used for generating resources for an expenditure *flow*. But since the financial argument against welfare expenditures is invariably confined to the question of money sums, we have also confined ourselves to this question alone. The basic point is that the money sum required for expenditures to ensure a set of basic economic rights, can be easily raised.

V. Concluding Observations

Two political questions may be raised here. First, if economic rights could not be introduced at the time of framing the Constitution because of opposition from certain groups, then how can we expect such rights to be introduced now? Is there any reason to believe that things have changed since that time? The answer to this question lies in the fact that we now have a history of seven decades to go by, which has clearly shown that the expectations entertained then about the prospects of economic betterment of the masses through "development" have been belied. These seven decades have been a learning experience not only for the political formations that would otherwise have supported economic rights but had acquiesced then in their non-inclusion, but also above all for the people themselves, whose desire for material improvement is palpable. This desire is now being articulated through "identity politics", demanding reservations for particular groups[21], but can be channelled to better effect into demanding universal economic rights.

Besides the question of the imminent achievability of this demand is not very pertinent here; if democracy is to be preserved then an alternative trajectory of development incorporating universal economic rights becomes necessary. And it has to be fought for, no matter what its imminent prospects.

A second related question is that any Constitutional change in this direction requires a major effort which would be difficult to make in sheer practical terms. There could however be a short-cut. As in the case of the

21 This phenomenon has been on the rise in India for decades now, but increasingly this demand has spilled over from the so-called "lower" caste strata to the so-called "dominant" caste strata as well. This can be seen through agitations and demands such as Marathas in Maharashtra (2018), Patidars in Gujarat (2015), Jats in Haryana (2016), Rajputs in Rajasthan (2018) to name a few.

MGNREGS, a unanimous resolution passed in both houses of the parliament could *de facto* set up a right, even though there is no formal Constitutional Amendment. Since such a scheme would be fully financed by the revenue mobilized by the central government, which would be imposing wealth taxation, the consent of the states would be unnecessary; and no state would dare not to implement such a scheme, when it does not have to bear any additional financial burden, for fear of alienating public opinion.

To be sure, it would be pointed out that the MGNREGS itself has been allowed to get whittled down over time, and is no longer, for all practical purposes, a rights-based programme. But this is because the running down of this programme by successive governments, which has clearly been in violation of law, has not been sufficiently challenged in courts. Rights have meaning only if they are justiciable; their justiciability has meaning only if the judiciary is brought into the picture when they are violated. Of course the judiciary being in the picture does not *ipso facto* guarantee the realization of a right, as is being seen today alas with regard to a host of political rights. The defense of rights requires not only public intervention but also a degree of sensitivity on the part of the judiciary. Those in the legal profession owe it to the people of this country to ensure such sensitivity.