

EQUITY & EQUALITY IN A MARKET ECONOMY

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On the occasion of the 50th Year of the Indian Law Institute, the organizers have thought it fit to have a national conference on a subject, which is both socially vibrant and intellectually stimulating and I congratulate them for the same.

In India, we have been following a planned economy rather than a market economy. But in recent years, there has been a perceptible change in the policies of the Government and an attempt to make the economy more market-oriented by the removal of direct control of Government. There appears to be a perceptible reduction of Government participation in manufacturing and other economic activities. The main reasons attributed to this change is that the bureaucratic planning and control system has failed to achieve its obligation of economic development and that there was a failure of economic policies. It was felt that in order for the existing resources to be efficiently used, any form of central planning could not perform the role of market mechanism. The success of a planned economy depends on the motivation and behaviour pattern of officials, whereas the success of a market economy depends largely on the motivation and behaviour of the large number of entrepreneurs.

There is a wide-spread criticism against the market economy and some people say that the market economy can never deliver social justice and that it would worsen institutional inequalities. It is said that it would create a dominant culture of cash economy, wherein, though the market may be free, the people would be captive. It is said that market economy may be a surest way of giving the people what they want, but in this process people would be compelled to accept many things, they do not want. The critics say that it would certainly deliver the economic goods, but it would also deliver some fearful social evils, such as rising levels of violations, breakdown of families, addiction to drugs, abuse of children, neglect of elderly and social isolation due to extreme competitiveness.

After quarter of a century of adoption of the Constitution, we included the word "Socialist" in the very preamble of our Constitution. Article 39 (b) the Constitution emphasizes that one of the guiding principles of good governance shall be that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and Article 39(c) says that the operation of the economic system does not result in the concentration of the wealth and means of production to the common detriment. These are the guiding principles, which are to be borne in mind when we go in for a market economy. Under the market economy system the production and distribution of goods and services takes place through the mechanism of free markets, guided by a free price system rather than by the State as in a planned economy.

In a vast country like India, how the economic system could be utilized for the welfare of the citizens in a more equitable way based on the principles of equity, is a perplexing question. Equity is a word with many meanings. In England before the Judicature Act of 1873, equity was considered as a branch of law, applied and administered by the Court of Chancery. It is not synonymous with justice in a broad sense. It was more or less based on discretionary power. In order to mitigate the severity of the rules of common law, the Chancery was taking decisions on the basis of equitable principles. The Chancellor, who was initially of the ecclesiastical order, could mould relief according to his own individual sense of right. That was why **Seldon** remarked,

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“Equity is a roguish thing. For law we have a measure.....equity is according to the conscience of him that is Chancellor and as that is longer or narrower, so is equity “Tise all one as if they should make the standard for the measure a Chancellor’s foot”. But now, by development of law, principles of justice and conscience are the basis of equity jurisprudence.

In the matter of education, health and access to infrastructure and public services, there are large-scale disparities between citizens and there is a vast difference between people in rich and poor countries. There are various reasons for these inequalities. Individuals aspiring for a better life are faced with highly un-even playing fields both in their capacity to acquire endowments and in their abilities in getting good results from those endowments; many such inequalities violate people’s concern for fairness. The average citizen in Luxembourg enjoys monetary resources 62 times higher than the average Nigerian. While the average Nigerian may find it difficult to daily afford adequately nutritious meals. The average citizen of Luxembourg need not worry too much about buying the latest generation cell phone in the market. Of course, the global inequality trends are varied and there had been a pronounced decline in the inequality. Inequality and life expectancy across the countries have been reduced. The average schooling level is rising in a vast majority of the courtiers.

The economic and political inequality is attributable to unequal opportunities. The poor generally has less voice, less income and less access to services than most other people. A guiding principle is to shape public action so that the acquisition of human capacity is not driven by circumstances such as birth, although, it can reflect people’s preference, taste and talents. Unequal opportunities are associated with inefficient wasted economic potential.

We should not be under the mistaken belief that the economy deal only with public administration and management of enterprises; rather it is a study of the human behaviour in relation to resources. The economic analyses shape public policies and a positive economy is a useful tool for analysing public issues. That is why, quoting Aristotle, Aquinas once said:

“We call that legal and just which makes for and preserves the well-being of the community through common political action.”

It is a difficult question to answer how inequalities could be curbed in a market economy. The economic opportunities are strongly shaped by access to infrastructure. India is a country where we are unable to provide even good drinking water to a vast population. There should be more equitable access to infrastructure. Investment in basic areas like water, energy and infrastructure can improve the situation. Improvement in transport infrastructure is required so that people may have access to the market. It is said that African farmers are effectively insulated from national and world markets because of poor roads, whereas in Indonesia, new roads that have come up allow poor household to successfully enter market economy. Labour-intensive public roads are making available jobs to unskilled labour.

The last but not least is the justice system. The World Bank Report on the justice system is apt to be quoted:

“Justice System can do much to level the playing field in the political, economic and socio-cultural domains, especially, when societies press for equitable laws and for transparency and accountability in their implementation. Legal institutions can uphold the political of the state by the elite. They can equalize economic opportunities by protecting property rights for all and ensuring non-discrimination in the market. They can force change in the social domain by challenging inequitable practices. But justice systems and legal institutions,

embedded as they are in the political and socio-economic structure of societies, can be jacked by special interests.

“More equitable access to infrastructure also has equity and efficiency benefits. Broadening access to infrastructure brings people closer to markets and services and to the power and water they need for productive activities and daily existence, expanding their economic opportunities. Expanding affordable access for poor people and poor areas requires tackling difficult financing issue, designing subsidies effectively, working with the informal providers, as well as making providers more accountable and strengthening the voice of beneficiaries. The challenges of expanding access to justice, land and infrastructure and rooting out corruption and elite capture remain significant for many developing countries.”

Unless this level playing field is assured to the people a sudden change to market economy would only increase the inequalities and would directly fly in the face of our constitutional guidelines given under Article 39 (b) and (c) of the Constitution.