States, Markets and Development: Changing Contours of the Public Debate in India

Moushumi Basu

Abstract

Historically the proliferation and consolidation of markets has been very much a function of politics. As an institution, the market is largely embedded in the structure and the regulatory mechanisms of the society wherein it operates. Markets vary in their openness – a given market is not necessarily open to all potential buyers and sellers. Differentiation on class, caste and gender play an important role in determining to a large extent the question of who participates in the market, under what circumstances and terms. In analysing the public discourse on development as it has evolved over the past two decades in India, the paper seeks to draw attention to the reorientation of the State’s role in development vis-a-vis the market and the implications of such realignment on the body politic as reflected in the increasing use of violence and coercion by the State against those opposing its development programmes and projects. The paper also seeks to review the prospects for the emergence of a rights and justice discourse from within movements, borne out of the inequities that characterise the present processes of development.

Keywords: State, Market, Development, India

The interplay between the institutions of the state and market has been the subject of much political, economic and social debate. As institutions, both have figured prominently in the discourse around development. The last few decades have witnessed a sharpening of the debate, focussing on the nexus between a rapidly increasing transnational class of corporate capitalists and the emergence of a global administrative regime, instrumental in promoting a model of market led growth. Focussing specifically on the Indian experience, the paper seeks to document the shifts that have taken place regarding the role of the state vis-a-vis the market in meeting the needs of development.

The Indian experience with development provides an important case study. Predominantly capitalist in orientation, traces of feudal life still exist in certain parts of the country that pose a challenge to the democratic norms of modern society. Bonded wage labour as opposed to free employment, small-scale labour intensive manufacturing units vis-a-vis larger and fully automated units of production, the co-existence of a relatively small organised sector with a massively huge and heterogeneous unorganised sector, are a few reflections of the complexities involved. It has been estimated that roughly 77 percent of the total Indian population totalling 836 million people, consist of the poor and vulnerable segments of the society, living on less than Rs. 20 a day. However, poverty as a condition of social life is more than

1 See Andre Beteille, Studies in Agrarian Social Structure (Delhi, 1974), Sumanta Banerjee, In the Wake of Naxalbari (Calcutta, 1980), K, Balagopal, Problings in the Political Economy of Agrarian Classes and Conflicts (Hyderabad, 1988), Navdita Gandhi and Nandita Shah, The Issues at Stake: Theory and Practice in the Contemporary Women’s Movement In India (New Delhi, 1991) for an elaboration of the interface between feudalism and capitalism in modern Indian society.

just low or inadequate income. It encompasses several other dimensions such as isolation, vulnerability and powerlessness. Moreover such deprivation is not natural, or out of bad luck or a matter of choice, but a state of chronic destitution arising from the absence of the most essential and basic of resources.

It is in this context of unmet needs and wants related to development, that the present debate over reallocation of responsibilities from the state to the market becomes critical. What is the criterion for selection of priorities? Who decides how allocations are to be made between a plethora of civil society actors? How transparent and accountable is the process of decision-making? All these questions assume importance as the introduction of liberalisation and privatisation in the name of development over the past two decades have witnessed a rewriting of the fundamental obligations of the state towards its citizens especially the poor. The reforms as Corbridge and Harriss put it are not simply about the renegotiation of India’s relationships with the global market-place, nor even are they about the relationships of private capital with the Indian State in the formal economy; the reforms are in essence also about reworking the idea of the State and its capacity to work on behalf of those who stand outside the narrow circle of elites. ³

I. States, Market and Development - Contextualising the Discourse

Historically, the word *development* came into usage in English in mid-seventeenth century and was used to convey primarily the idea of a society passing through definite *evolutionary* stages. The identification of development with industrialisation was inherent, and got gradually strengthened through time till in the twentieth century the association between the two was looked upon as perfectly normal. Following the end of the Second World War, with the emergence of *underdevelopment*, a word coined to describe the relative condition of the colonies and ex-colonies *vis-a-vis* the industrialised group; the dominant notion of progressive evolution i.e. economies and societies proceed in a set course of “stages of development”, became firmly established. Each sense of the term *underdeveloped* connected with images of poverty-stricken societies, to which the established ideas of development were applied. Development in such an ethnocentric framework was inevitably equated with westernisation, producing a discourse that for many represented nothing more than yet another form of domination and control.

In the present context, the recommended policy reforms are not simply just about accessing the global market place, or building private-public partnerships, but fundamentally about reworking the idea of the State. Both the state and the market are amongst the many institutions that govern the relationship between individuals living in a particular society. The state having the authority and the legitimate power to exercise coercion shapes the way the market functions. The market in turn steeped in non-market institutions like caste and kinship networks relies on these for its sustenance and growth. The organisation of exchange in a social setting is a

mediated process, dependent on a number of interrelated factors. Markets vary in their openness – a given market is not necessarily open to all potential buyers and sellers. Differentiation on class, caste and gender play an important role in determining to a large extent the question of who participates in the market, under what circumstances and terms.

Historically, the proliferation and consolidation of markets has been very much a function of politics. As an ideology, neo-liberalism is theoretically rooted in a depoliticised understanding of development, particularly regarding the role and functioning of markets in history. The market economy is defined as one based on voluntary cooperation, each interaction in the vast web of market relationships (what Hayek described as the ‘extended order’ of the marketplace) involves voluntary cooperation, which is the origin of the market’s mutual benefits. ‘No arrangement is imposed by someone else’s decree. Rather, each develops as people follow their self-interest, among participants who often live in vastly disparate places, speak and write in a multitude of languages and often believe many different, and sometimes mutually inconsistent, things. And the more competition operates at each stage, the better the outcome, because the requirement to get others’ consent forces competition into positive channels, generating beneficial results’ (Hayek)

In constructing a narrative of development minus a discussion on context, structure and power, the neo-liberal discourse on development however precariously builds on the abstract. The market is interpreted as a spontaneous order that does not engage in the pursuit of any intentional outcomes. There are no ends in that sense that the market actively seeks to attain. By implication therefore, there can never be a moral critique of the market in terms of their supposed injustices. An injustice occurs only when a person intentionally interferes with the life of another without that person’s consent. And since there are no ‘intentional distribution of resources in a free market economy, poverty and deprivation become more a matter of misfortune borne out of bad luck than an injustice brought upon by the workings of the market.

According to Hayek, strictly speaking, only human conduct can be called just or unjust. If we apply the terms to a state of affairs, they have meaning only in so far as we hold someone responsible for bringing it about or allowing it to come about. As long as it remains a spontaneous order, the particular results of the social process cannot be just or unjust. In a spontaneous order the position of each individual is the resultant of the actions of many other individuals and nobody has the responsibility or the power to assure that these separate actions of many will produce a particular result for a certain person. By implications therefore, the market is in no way responsible for the inequities and shortcomings that arise by way of its operations.

An abstract categorisation of the market such as the above not only provides a ahistorical reading of the interface between the political and the economic forces at work, it necessarily also obscures the politics of who gets what, when and how through the process of development. As an institution, the market is largely embedded in the structure and the regulatory mechanisms of the society wherein which it operates.
The existence of slave markets in ancient Greece and Rome or in the United States prior to the Civil War demonstrates what Polanyi describes as the complex ‘double movement’ through time between institutions of the State and the proliferation of markets in history.

This is plainly visible in the way neo-liberalism conducts itself in practice. Despite fundamental opposition to the institution of the State, neo-liberalism has greatly relied on the apparatus of the State, especially its capacity to exercise coercive powers, to enforce globally its preference for the market. The State in an unprecedented move has been privy to its own dissolution through a deliberate and most calculated dismantling of public services. Beginning with Thatcherism and Reagonism in the West and then through series of structural adjustment and stabilisation programmes in the rest of the world, the institution of the State have been subject to gradual metamorphosis. A change not necessarily borne out of the local, but more or less brought upon countries at the behest of a small circle of transnational elites, interested in furthering the process of market expansion for the sake of rapid capital gains.

Neo-liberal ideas of freedom and rights with the market as their natural ally, derives its legitimacy from the notion of capitalist modernity. A modernity that dwells on the creative possibilities of progress through technical perfection and precision – a ‘modernity of technology’ in contrast to the ‘modernity of liberation’, substantive democracy and human fulfilment. A discourse that conveniently omits all references to exploitation and contradictions arising out of the unequal distribution of growth in the process of modernisation. Drawing upon the specific example of India, the next few sections seek to elaborate upon the above observations, and examine the shifting contours of the public discourse in the wake of rapid globalisation.

II. Development Planning vs. Free Market: The Indian Experience

Narratives on development (political, economic, social and cultural) have been a central and recurrent theme of the political imagination of India. Whether it be nationalists leaders like Dadabhai Nauroji who took upon themselves to critique the drain of wealth by the British capitalists, or statesmen like Nehru espousing a mixed economy comprising of both the public and the private sectors, or indigenous entrepreneurs like the Tatas, Birlas and Modis, the engagement with development has been constant. Added to this, the subaltern critique coming from peasants, workers and tribal movements have been vocal in drawing attention to the normative aspects of the debate, on the persistence of exploitative practices and the inequities that characterise the development process.

In comparison with other erstwhile colonies in Africa, Asia or South America, the Indian experience offers some unique and interesting points of view on some of the important aspects of development. For instance, the interrelationship between development and growth, development as progress, democracy and development, development and rights. Equally influenced by the Soviet model of socialist
planning and Keynesian welfarism and the resultant model of mixed economy, throws up many interesting insights both from the point of view of theory and practice, of capitalist development and exchange. The following section provides a brief historical overview of the Indian situation, before moving onto the specific case study of labour welfare.

Historically the formal end of two hundred years of colonial rule in August 1947, presented a significant opportunity for social and economic transformation. From 1757, the year the East India Company established its control over Bengal till the very last years of colonial rule, India remained a prized possession of the British. An ideology of “paternalistic benevolence, occasionally combined with talk of trusteeship and training towards self-government”, thinly veiled the realities of the Raj. The unsatisfactory diffusion and denial of the accrued benefits to a large majority of the native Indian population, along with gradual impoverishment under colonialism, provided the immediate imperative for an indigenously designed, self-reliant programme of development. Amid other developing countries who gained independence around the same period, the relatively better position of India gave rise to genuine expectations that despite the grinding poverty, the country would manage to embark on a successful programme of national reconstruction and development. India benefited from a rich stock of natural resources, an industrial base which by the standards of other colonies was fairly broad and advanced, a bureaucratic and administrative apparatus and lastly a political leadership committed to a programme of modernisation.

It is interesting to note that while the very political strategy of building up a mass movement against colonial rule had required the nationalists to espouse Gandhi’s idea of machinery, commercialisation and centralised state power as the curses of modern civilisation imposed by European colonialism, Gandhi’s vision of national self-sufficiency through a vibrant and largely self-reliant village economy was considered to be too impractical and unrealistic at the eve of Independence. Instead of the Gandhian model of community-based decentralised development, a centralised model of planned development was adopted, in the hope of rapid industrial and economic transformation, very much influenced by the theories of socialist development.

---

4 For a more exhaustive commentary of the economic consequences of colonial rule, see Romesh Dutt, The Economic History of India: In the Victorian Age 1837-1900 (Delhi, 1963) and R. Palme Dutt, India To-day (Calcutta, 1970, 2nd edn.).

5 Sumit Sarkar, Modern India 1885-1947 (Madras, 1983 reprint), p. 1. Administrative charges levied by the British Government, euphemistically referred to as the “Home Charges” came to £17.3 million in 1901-02 of which interest on railways made up for £6.4 million, the interest on India Debt £3 million, army expenses £4.3 million, stores purchase £1.9 million and pensions £1.3 million. Sumit Sarkar, pp. 25-27. This “drain of wealth” propounded by early nationalist leaders such as Dadabhai Naoroji to highlight the exploitative relationship existing between Britain and India represented a potential surplus that if invested properly within the country might have helped raise India’s income considerably.

The central core of the development policy was a move towards a capital intensive, public sector led programme of heavy industrialisation. The strategy “did not draw its principal inspiration from a reasoned analysis and assessment of the political economy of the country, its resources, social structure and the immediate needs of its people.” Instead, it drew upon the very model of the modern industrial economy that the freedom struggle had criticised severely in its drain of wealth theory. The initiation of an aggressive policy of industrialisation minus commensurate attention on other equally more important goals of development therefore left much to be desired.

While a popularly elected representative form of government provided both the legitimacy and the mandate to the Executive to determine the vision and course of development, the Executive in India also retained a degree of autonomy from the civil society in determining the goals and objectives of development. The Westminster model of parliamentary democracy in fact replicated the colonial practice of giving the Executive de facto powers to decide, plan and execute all policies related to national and regional development. A strong consensus existed among the political leadership and the immensely powerful bureaucracy concerning the central importance of industrialisation in laying the groundwork for development. While the Government formally announced the abolition of zamindari and placed ceilings on land ownerships, these concerns were considered to be of secondary importance to the industrialisation that continued to be closely identified with modernisation.

While it is understandable that situation prevalent at the time of Independence was a complex one, the failure of the Indian State to undertake a proactive programme of social reconstruction and development remains an anomaly. For example, on the issue of caste, while in 1955 the Government passed the Untouchability (Offences) Act, which made its practice in any form a punishable offence, there was little that was done in concrete terms to tackle the issue of caste-based discrimination. While


8 The reluctance of the political leadership to undertake structural reforms has been theorised in the works of many scholars such as Partha Chatterjee, Sudipto Kaviraj, Gunnar Myrdal and others. Both Chatterjee and Kaviraj have borrowed Gramsci’s concept of passive revolution to describe the context in which the new claimants of power, lacking the social strength to launch a full scale assault on the old dominant classes, opt for a path in which the demands of a new society are satisfied in small doses, legally in a reformist manner—in such a way that the political and economic position of the old feudal classes is not destroyed, agrarian reform is avoided, and the popular masses are prevented from going through the political experience of a fundamental social transformation. Gunnar Myrdal on the other hand uses the “soft state” analogy to describe very much the same phenomena. According to him there is unwillingness among the rulers to impose obligations on the governed and a corresponding unwillingness on their part to obey rules laid down by democratic procedures. See Partha Chatterjee, _The Nation and its Fragments: Colonial and Postcolonial Histories_ (Delhi, Indian edn.1995), Sudipto Kaviraj, ed., _Politics in India_ (Delhi, 1999),Gunnar Myrdal, _Asian Drama : An Inquiry into the Poverty of Nations_ (New Delhi, 1992 reprint).

9 For a review of these two programmes see Atul Kohli, _The State and Poverty in India: The Politics of Reform_ (Cambridge, 1987).
States, Market and Development: Changing Contours of the Public Debate in India

the Act provided protection against social disabilities imposed on certain classes of persons by reason of their birth in certain castes, “it did not cover social boycott based on conduct.”

In other words, there was no affirmative action to regulate customary practices that prohibited persons belonging to lower castes from using the same wells, attending the same temples or marrying persons from other castes. Constitutional provisions provided legal guarantee of greater equality; however, in practice, considerable inequalities persisted. The majority of the lower caste either worked as agricultural workers or continued to be engaged in traditional occupations, such as flaying and scavenging.

Therefore, while economic growth and democratic arrangements buttressed the legitimacy of political authorities by providing economic rewards to the upper class urban professionals and the rural landed elite, the majority of workers in both agricultural and the industrial sectors received relatively little benefits from this growth. Studies undertaken have in fact shown that the pattern and process of development in fact strengthened the primordial system of caste-based loyalties. The Community Development Programme, instituted in 1952, serves as a useful illustration of the inherent limitations of a process of development biased against persons coming from lower castes. Although the first phase of the programme focussed on the improvement of social amenities such as schools, health centres, roads, wells, etc., the major beneficiaries were upper caste elites; lower caste workers who constituted the majority of the poor continued to be both physically and socially deprived of the benefits of such investments. This brings us to the important discussion of the legal guarantees offered by way of rights in the sphere of economic and social development to citizens.

Rights, Entitlements and Well Being

While rights constituted an integral theme of the nationalist movement and were accorded special importance in the Constitution of India, the conceptualisation of development in the post-Independence period was ironically bereft of the rights framework. India it may be noted was one of the few countries that constitutionally accorded equal civil and political rights to both men and women at a time when certain countries such as Switzerland continued to deny to its women the right to

10 In Devarajiah v. Padmanna (1961), the Supreme Court of India interpreted the objective of Article 17 of the Indian Constitution relating to the abolition of untouchability, as proclaiming the end of the inhuman practice of treating certain fellow human beings as dirty and untouchable by reason of their birth in certain castes.


14 Gunnar Myrdal, Asian Drama: An Inquiry into the Poverty of Nations, n. 28.
franchise. A separate section (Part III, Articles 12-35) was devoted to rights that were considered to be fundamental in the new Constitution. These were essentially rights of a civil and political nature delineating limitations or restrictions on the actions of the State, such as equality before law, the right to freedom of speech and association, rights against discrimination on grounds of religion, race, caste, sex and birth. However, given the fact that at the social level there were certain bottlenecks that impinged on the enjoyment of certain freedoms, affirmative action constituted an important part of the responsibility that the State had towards the protection and promotion of civil and political liberties.

The protection of economic, social and cultural rights on the other hand was more implicit. Placed in a separate section as Directive Principles of State Policy (Part IV, Articles 36-51), this set of rights were included to serve as policy guidelines for successive governments to build upon the ideal of a democratic welfare state as set out in the Preamble. A commitment to “equal pay for equal work for both men and women”, “conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities”, “the ownership and control of the material resources of the community …to sub serve the common good,” “right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement” etc. were some of the important principles enumerated in this section.

While legally the Constitution made the State explicitly responsible for the protection and promotion of civil and political rights, the State’s responsibilities to the protection of social, economic and cultural rights were relatively less explicit. At the time of Independence while non-justiciability of Directive Principles was justified on the grounds that “a State just awakened from freedom with its many preoccupations might be crushed under the burden,” there were demands from certain representatives to make Directive Principles of State Policy justiciable. While the constraint on resources was invariably an important consideration it is debatable whether financial constraints provided the sole justification for the State to refrain from assuming direct and binding obligations in development. The Kerala experience with development clearly counters such reasoning. Following independence in 1947, while Kerala continued with the legacy of allotting a

---

15 The Preamble to the Indian Constitution calls upon the State to secure the following ideals for all its citizens: “justice, social, economic and political; liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation.”

16 The Constitutional Advisor to the President of the Constituent Assembly, B. N. Rao in fact suggested an amendment that would make Directive Principles enforceable in a court of law. However, the amendment was not carried out, as it did not find favour with the majority in the Constituent Assembly.

17 Government of India, Constituent Assembly Debates.
substantial share of public resources to social investments, this was not the case for the rest of India.\footnote{Patrick Hellar, “From Class struggle to Class Compromise: Redistribution and Growth in a South Indian State”, \textit{The Journal of Development Studies}, Vol. 31 (5), June 1995.}

Given the arbitrary nature of obligations towards development, the issue of justiciability certainly merits attention. While there is no disagreement over the fact that the State has an obligation to improve the standard of living of all its citizens, there is relatively little consensus over whether such a responsibility be made legal and justiciable, creating positive obligations for the State to undertake certain policy steps in order to fulfill and provide for the social and economic needs of individuals. This is where the protection of legally enforceable social and economic rights, as opposed to merely aspirational rights enters the debate.\footnote{Jackbeth K. Mapulanga-Hulston, “Examining the Justiciability of Economic, social and Cultural Rights”, \textit{The International Journal of Human Rights}, Vol. 6 (4), pp. 29-48.} Legal acceptance of rights implies that States are under an obligation to respect, protect and fulfil such rights. The obligation to respect, involves a positive affirmation on the part of the State not to undertake any action that would cause obstruction or hindrance in the process of right’s fulfillment. The protective function of the State is the most important as well as manageable aspect of the State’s obligations, as the State’s role in the protection of economic, social and cultural rights are very similar to its role as protector of civil and political rights. The obligation to protect calls upon the State to safeguard the rights and freedoms of individuals from negative actions arising on account of unethical practices. Moreover, the State also has the positive obligation to facilitate and aid the process of rights realisation by undertaking affirmative action that guarantees suitable opportunities and means for citizens to realise their needs.

The next section takes up the specific case of labour to substantiate and take the discussion further. With the second largest population in the world, labour is one area that is never in short supply in India. Yet in the 60 years and more of independence, one of the obvious failures of the Indian state has been its inability to provide for the vast majority of the work force, certain guaranteed rights related to work and employment. This is particularly so because technically the organised sector where labour laws and regulations operate, amounts to only 7 percent. For the rest 93 percent of the total work force that is employed in the informal or the unorganised sector, rules and regulations laid down by the State do not directly prevail. While basic principles governing state policy as enshrined in the Constitution implicitly call upon the State to ensure safe and proper working conditions for all workers, the legislations prescribing principles and procedures are however restricted in their application to workers in large industries. The organised sector is one defined as employing 10 or more workers with power or 20 or more workers without power. An informal sector unit by that logic is one employing less than 10 workers leading to a situation whereby a preoccupation with size becomes the defining criteria for intervention by the State.
Transposed at the macro level, the statistics reveal a most alarming picture. Estimated at comprising 60 percent of net domestic product, 31 percent of agricultural exports and 41 percent of manufacturing exports, the informal sector is a key constituency of the economy. By virtue of the size of employment that it supports, it undoubtedly forms the inevitable backbone of the Indian economy. Increase in employment figures (1990-2005) show a recorded growth in the numbers employed in the informal and unorganised sectors of the economy, leading to what has been described as the informalisation of the formal sector. The workforce employed in the informal economy comprises mainly of four categories of workers. These are:

a. Wage workers in the Unorganised Sector – workers employed directly by employers, agencies or contractors. These include casual and temporary workers, migrant workers and those employed by households as domestic workers.

b. Self-employed in the Unorganised Sector – these are persons who operate farm or non-farm enterprises and engage in home-based production. Workers in this category usually include unpaid family workers also.

c. Unprotected Wage workers in the Organised Sector- Unprotected workers are mainly in the categories of regular, casual and contract workers who remain unprotected because of non-compliance of the provisions of existing laws.

d. Regular Unorganised workers- Persons working for others and getting in return salary or wages on a regular basis.

The informal sector therefore constitutes a most diverse group. The percentage of workers employed in agriculture is more than the non-agriculture segment. It is estimated that the agriculture employs 65 percent of self-employed and 35 percent of casual workers. In the non-agricultural segment, the workforce is divided between the self-employed (65 percent), regular (17 percent) and casual (20 percent). Ranging across a wide array of professions, this segment also constitutes the most vulnerable sections of the Indian society. For example, majority of the wage and self-employed workers in rural non-agricultural unorganised sector are landless and sub-marginal land-holders with very small land holdings of less than 0.4 hectares. Social networks also play a crucial role in determining entry into labour markets. Low levels of education amongst the Scheduled Tribes(ST) Scheduled Caste (SC) and Other Backward Caste (OBC) population constrains their entry into the organised sector market, confining them to be casual workers without any social security or legal protection for life. Available estimates show that only 0.4 percent of the unorganised sector workers receive social security benefits like Provident Fund, a


22 Ibid., p.4.
figure that has virtually remained unchanged in recent years, despite all the rhetoric about the need for social protection for the needy.

III. Law and the Regulation of Labour Markets

The laws governing labour relations like many other spheres of public life in India, has its antecedents in the colonial past. Among the earliest statutes found are the Workmen’s Breach of Contract Act (1859), the Employers’ and Workmens’ (Disputes) Act (1860), the Trade Unions Act (1926), Industrial Employment (Standing Orders) Act (1946) and the Industrial Disputes Act (1947). Brought into being by the British, these Acts did not seek to directly address the interests of the working class. In fact, British capitalism as it operated did not really seek to alter the primordial relations of production and instead sought to take advantage of these to secure and run their businesses. This reliance on local and regional networks continued to be in vogue even amongst the Indian bourgeoisie. Unbroken practices and perpetuation of continuities made the promise of a new beginning appear illusory.

The Directives Principles of State policy enshrined in the Constitution, however did play a significant role in influencing the State to undertake some progressive legislation. For example, in 1948, the Central Government enacted the Minimum Wages Act and the Employees State Insurance Act to address certain issues related to the welfare of workers. This was followed by the Contract Labour (Regulation and Abolition) Act (1970), the Equal Remuneration Act (1976), and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service Act (1979). However, with the onset of liberalisation, pro-active intervention by the State has once again receded to the background. In enforcing the new rules, it has been the judiciary rather than the Executive that has been more pro-active. I take up two judgements delivered by the Supreme Court of India to illustrate the shifts that have taken place regarding the constitutional obligations of the state regarding workers and the regulation of labour markets.

Informalisation of Work Force

One of the areas where the shift in public discourse is clearly apparent is in the increasing advocacy of contract labour by agencies of the State. Contract labour it is important to note as per the Contract Labour (Regulation and Abolition) Act (1970) passed to regulate the employment of casual labour in certain establishments provided for its abolition in certain circumstances. Recognising the fact that workers were too easily exploited by contractors, the Act sought to emphasise the responsibility of the principal employer in ensuring that the payments and working conditions as stipulated by law were met in practice. The Act was based on the premise that contract labour would gradually be replaced as more jobs came to be regularised. In 1982 in an important case before the Supreme Court, PUDR vs Union of India (better known as the Asiad Case), involving wide scale violations related to non-payment of minimum wages to the contract labour employed in construction of complexes associated with the Asiad Games, the Supreme Court passed a
landmark judgement. The Court upheld that the right to life guaranteed is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed ... but it also includes within its scope and ambit the right to live with basic human dignity and the State cannot deprive anyone of these precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just.

In another significant judgment, Air India Statutory Corporation vs. United Labour Union (1996), the Supreme Court upheld the right of workers employed on contract to be automatically absorbed after significant passage of time in the regular work force. Following a 8-year struggle by workers in the Bombay airport and other airports, the Supreme Court in November 1996 abolished the contract labour system in all airports for sweeping, security guards and cleaning staff and directed the airport authorities to absorb the roughly 2,000 workers in these categories in Bombay, and also potentially benefiting the thousands of workers in these categories in dozens of airports in the country. It also, in a correct and broad reading of the Contract Labour Act, upheld the right of contract workers to be absorbed directly as permanent workers on the abolition of the contract labour system.

Almost several years later in a series of judgements, the Supreme Court reversed its own understanding on the use of contract labour. It now argued for the regularisation of contract labour as the standard practice. In Steel Authority of India Ltd. & Others. v. National Union Water Front Workers & Others. (2001), a constitution bench of the Supreme Court clubbed together several existing cases and overturned the landmark Air India judgement. The five judge bench made the following observation.

Neither S.10 of the CLRA Act, nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour. Consequently, the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment....by abolition of contract labour, the principal employer would be compelled to employ permanent workers for all types of work which would result in incurring high cost by him. This could well be yet another reason for not providing automatic absorption.

More recently about two years back in another case, Secretary State of Karnataka v. Umadevi and others (2006) a five judge Constitution Bench once again reiterated the argument offered in the Steel Authority of India judgement. While considering the plea that casual workers employed over a long period of time should be absorbed in the regular work force, the Court held:

While it might be one thing to say that the daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its Executive, is bound to give permanence to all those
who are employed as casual labourers or temporary hands ... the court ought not to impose a financial burden on the State by such directions, as such directions may turn counter-productive.

**Equal Remuneration for Equal Work**

This principle in work - which is premised on the principle of equality - is that a worker, whether on contract or temporary, would get the same wage as a permanent worker doing the same work in that workplace. It took the Indian judiciary about thirty years to recognize equal pay for equal work in the *Randhir Singh* case in 1982. However, by 1989, judgments started questioning the efficacy of such an argument. Even where work is similar, judgements proclaim that the qualifications are different and refuse to direct the payment of equal wages. Thus by 2002 we have judgments declaring that equal pay for equal work is not a fundamental right of any employee though it is a constitutional goal. For example, the question of the recruitment process and equality came up in the case of *Secretary State of Karnataka v. Umadevi and others* (2006), the Court held that if the said employee had not been recruited under prescribed rules relating to recruitment, she would not be entitled to regularization irrespective of how many years she had worked. Similarly in the *Sushmita Basu v. Ballygunge Siksha Sanity* (2006) case, the Supreme Court denied teachers in West Bengal who were asking for wages at par with government employees, by remarking that if teachers were to claim higher salaries and perquisites, the burden would be passed on to the students in the form of higher fees. The Supreme Court’s stand on the question of equal remuneration appears to be blind to the realities of the labour market in India. It has been fairly well documented that women are made less wages than men for the same work over large parts of the country. Women are paid less than men for the same work, with the average agricultural wage rate per day for women about Rs 16.4, while it is Rs. 23.4 rupees for men as per the report of the UN Special Rapporteur on the Right to Work.

The contrast between the positions taken by the Supreme Court in the *Asiad* case (*PUDR vs. Union of India: 1982*) and subsequent judgements on labour (eg. *Steel Authority of India Ltd. & Others. vs. National Union Water Front Workers & Others.* (2001), *Balco Employees Union vs. Union of India* (2001), *Umadevi and Others vs. Secretary State of Karnataka* (2006), mark the shift in attitudes that have followed. In the *Asiad* case whereby the Supreme Court extended the scope of the meaning of article 21 of the Constitution (right to life) to include the right to livelihood along with the ‘right to live with basic human dignity’; in the 1990s the judiciary refrained from making any such connections. In cases involving the violation of rights in the course of privatisation, the Supreme Court has strongly made a case for the exclusion of economic policies from the purview of judicial review in its judgements in *Shri Sitaram Sugar Co. Ltd v. Union of India* (1990), *Peerless General Finance and Investment Co. Limited and Another v. Reserve Bank of India* (1992), *Narmada Bachao Andolan v. Union of India and Others* (2000) and the *BALCO Employees Union v. Union of India*
(2001) In the BALCO Employees Union v. Union of India (2001) case, the Supreme Court actually reversed its own ruling delivered in National Textile Workers’ Union and Others v. P.R. Ramakrishnan (1983) that supported the right of workers to be consulted in the decision-making involving the closure of the industry concerned.

References


Balagopal, K., Probing in the Political Economy of Agrarian Classes and Conflicts (Hyderabad: Perspectives, 1988).

Banerjee, Sumanta, In the Wake of Naxalbari (Calcutta: Subarnarekha, 1980).


Beteille, Andre, Studies in Agrarian Social Structure (Delhi: Oxford University Press, 1974).


Corbridge, Stuart and Harriss, John, Reinventing India: Liberalization, Hindu Nationalism and Popular Democracy (New Delhi, Oxford University Press, 2001).


Dutt, Romesh, The Economic History of India: In the Victorian Age 1837-1900 (Delhi: Low Price Publications, 1995 edn).


23 “Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgement over matters of economic policy and it must necessarily be left to the expert bodies.” See Peerless General Finance and Investment Co. Limited and Another v. Reserve Bank of India (1992).
Harriss-White, Barbara, *India’s Socially Regulated Economy* (New Delhi: Critical Quest, 2007)


