EQUITY AND INEQUALITIES IN INDIA: MULTIPLE REALITIES AND INTERPRETATION

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INTRODUCTION

The main argument of this paper is that in order to have a successful strategy to fight poverty it is necessary to identify "who are the poor." Simply aiming at reducing the material poverty without taking into account the cultural and political rights of indigenous peoples/caste communities has proved to be insufficient. Numerous poverty alleviation programs put in place over the last few decades have generally failed to implement equality of access to resources—material or symbolic. These programs are often perceived as not taking into account the nature of aspirations for development present in a community, a process which would call for an opening to pluralism. One may wonder if the efficiency of laws against poverty could increase if, as a complement to equality, equity could be not only a directive principle but also a goal.

Despite its frequent use in policy and planning documents, there is no consensus on what equity means. Moreover, there are few conceptual analyses on the issue of equity in the related areas of education, sustainable development and poverty alleviation. The writings on the concept of equity were originally found in the legal literature in the fields of property, contracts and torts. The legal development of this concept explains in large part the reason why it is discussed in these contexts. It has become prominent in other fields such as economics and health. To better understand equity, we need to refer to what is generally included in the definition of equity. The Oxford English Dictionary provides two main definitions: (1) equity is the quality of being equal and fair; (2) equity refers to something that is fair and right.

The Latin æquitas *was somewhat influenced in meaning by being adopted as the ordinary rendering of Greek epiky (πιείκεια (see epiky n)). It meant reasonableness and moderation in the exercise of one's rights, and the disposition to avoid insisting on them too rigorously. An approach to this sense is found in many of the earlier English examples.*

Equity jurisprudence can be traced back soon after the Norman Conquest of the British island. Prior to the development of the common law courts in England, the king had the power to determine the outcome of all disputes, based on his own conscience. These decisions, or writs, later became the common law and provided a pattern for the courts to follow. As the common law courts and Parliament used the writs to determine law in England, the king's equitable jurisprudence narrowed, and the requirements to bring a case in the common law courts became more and more specific, limiting the possibility for the petitioners to seek the king's justice. That is why, towards the end of the 14th century, the chancellor (the king's primary adviser) began hearing disputes on behalf of the king, again making a decision based on equity. Among all classes, there was a belief that in the chancellor resided a general power to redress all wrongs if, for any reason, the person injured could not protect himself through the common law. Each case was determined independently and the outcomes were not based on precedent decisions. The goal of the chancellor—and later of the Court of Chancery—was to take all the facts into account and determine an outcome based on fairness.

The early uses of equity were to fill gaps when there were no remedies available under the common law or to reverse the rigidity of the legal system. In both scenarios, it was a call to fairness. However, it was originally based on the King or his representative's conscience. Yet, there was always a desire to consolidate or to solidify a body of knowledge which would not depend on one or few persons' consciousness in order to represent a larger consensus on fairness. Eventually, in contemporary state legal systems belonging to the common law family, courts of equity and common law courts were merged. That was also the case in India, where the principle of equity was "included" in the Specific Relief Act. The Specific Relief Act of 1963 was an Act to amend laws relating to specific kinds of relief. It could be granted for enforcing individual civil rights and not for enforcing penal law. In other words, equity was integrated in the state legal system.

Then, one may wonder what is left of the early process of requesting equity from below. Within the contemporary process of defining what equitable distributions of material and symbolic resources are, the community perspectives on equity are seldom examined in the development literature in spite of the fact that equity is central to community-based development efforts. In their study of community-based rainwater harvesting in Rajasthan, Cochran and Isha (2009) clearly demonstrate that: "Equity persists as an ill-defined concept with its many, and contested meanings largely unexamined. Specifically, the motivations, and practices of different community members, and the roles they play in community-based conceptions of equity, are rarely considered in philosophical, or empirical scholarship on equity" (p. 435).

This leads us to acknowledge that an intercultural approach is necessary to grasp the subtleties of equity in various cultural contexts as a concept can never be considered without taking into account its cultural roots. In his book, *The Argumentative Indian*, Amartya Sen explains how the tradition of heterodoxy had a clear relevance for democracy and secularism in India. The interplay between heterodoxy and inclusiveness allowed the acceptance of different groups of persons as authentic members of the society throughout the history. Those groups had a right to follow their own customs and beliefs. The Sanskrit word for acceptance (*swikriti*) does not imply the idea of equality but rather that different groups are entitled to lead their own lives. This interplay between heterodoxy, inclusiveness and acceptance can help to reduce inequities in contemporary Indian society by easing the plurality of voices to be heard. Sen (2005) acknowledges that "voices of dissent—social as well as philosophical—have often come across barriers of caste, class and gender, and they have not been entirely ineffective" (p. 37).

In terms of the quest for justice and equity, he clarifies that: "The demands of justice in India are also demands for more use of voice in the pursuit of equity. The argumentative heritage may be an important asset, but its effectiveness depends on its use. Much would depend on the political deployment of the argumentative voice in opposition to societal inequity and asymmetry, and the actual use that is made of the opportunities of democratic articulation and of political engagement. Silence is a powerful enemy of social justice" (Sen, 2005).

The interrelationship between equity, diversity and dialogical tradition in India leads us to underline the subtleties of the concept of equality in the Indian context. According to Ambedkar, "What was at issue was not simply equality as a right available to all individuals but also equality as a policy aimed at bringing about certain changes in the structure of society." (Béteille, 1986). As André Béteille (1986) underlines, the Indian concept of equality does not have the same individualistic reasoning as the West, because individuals are conceived as being a part of a whole. Hence, the concept of individual rights also includes a notion of duty (p. 123).

In terms of poverty alleviation, what kind of access to resources and justice can be considered to be fair? The heterogeneity of answers to what should be considered as equitable does not only vary according to cultural and religious backgrounds. Moreover, multiple interpretations exist in every cultural identity. How is it possible then to ensure that the notion of equity, even when defined at a local level, reflects the empirical reality of diversity? Is it possible to define equity only through a process of dialogues which would be solely valid in a specific context?

GOVERNING THE "POOR" IN INDIA

The Constitution of India contains extensive provisions for its minorities, namely the scheduled castes (SC) and scheduled tribes' (ST) right to development, and specifically mentions these two groups for affirmative state action. It is estimated that the tribal population of India is about 8.2% and the scheduled castes make up about 16.2% (2001 Census) of the total population, which by all accounts is a colossal number. Both these groups in India are at the bottom in terms of the human development index (HDI). Although there is a general lack of disaggregated data, per capita total expenditures among SC and ST households are generally lower than the average for all states in India.

While there are numerous articles that refer to both the social groups, two specific Schedules of the Constitution underline the principle of non-discrimination against scheduled tribes. Besides, for purposes of specific focus on the development of SC and ST, the government has adopted a package of programmes. Despite these constitutionally guaranteed entitlements and policy initiatives, the plight of the SC and ST remain high. This paper argues that this is mainly because the Indian state has failed to accept and apply the heterogeneity of the concept of equity and has not realized the importance of contextualizing its meaning within cultural contexts in order to deal with the challenges we have to face in using it to find empirical solutions to injustices.

The history and cultural experience of scheduled tribes and castes are different even though they both have been economically relegated to the same lower rungs of society. India's response to the needs of the SCs and ST is based on the welfare model of development which endeavours to empower both groups to benefit from modern development. It is felt that if tribal or scheduled castes have been marginalized they should be

compensated by welfare actions. This idea had evolved in the first Five-Year-Plan in the 1950s and was modified over time through welfare programmes by different government committees such as the Elwin Committee (1959), Scheduled Areas and Tribes Commission (1961).

In the 1980s and 1990s a new phase of development programmes called Poverty Alleviation Programmes (PAPs) were introduced. These can be broadly categorised into four categories such as employment generation schemes (Integrated Tribal Development Project (ITDP), Swarnajayanti Gram Swarojgar Yojana); area development (Drought Prone Area Programmes); social security; and other programmes such as housing (Indira Awas Yojana). These programmes sought to aim at certain "target groups" such as scheduled castes and tribes, apart from others like women. These schemes were meant to expose the communities to markets, and resulting products could receive monetary value leading to decline in poverty, unemployment and migration.

But while the rural areas did benefit, the tribal population without access to even land and hence agriculture and its allied economic activities, were not able to receive any benefit from these development programmes. These programmes were unsuitable for tribes. Added to that was the government failure to implement the programmes properly. Two kinds of tribal economies are identified in India: Hill or forest-dwelling economies which depend on shifting cultivation, hunting and food gathering (North East and areas in Orissa, Chattisgarh and Jharkhand); and plain or valley-dwelling economies which depend on settled cultivation, livestock, hunting and fishing. There could be a third kind of tribes, those depending on pastoral economy. However, all three are based on self-consumption. In contrast, the national economy is based on industrial capital with investments in industries and construction of dams, and distribution of loans and subsidies to tribals to aid them in self-employment. The aim is national development.

What is even more ironic is that there are important federal enactments already in place to help assist the tribal peoples in respect of their access to resources and any wrongful dispossession of land or interference with the enjoyment of rights over any land, premises or water. The government also made efforts to promote education and employment opportunities for the SCs/STs through protective discrimination policies as per the constitutional provisions and through scholarship facilities. Besides, in some areas, independent tribal authorities have important powers. At the local government level, *Panchayats*, in which seats are reserved for the Scheduled Castes and Scheduled Tribes, have increasing power over land acquisition since the *Panchayats* (Scheduled Areas) Act, 1996, and in the management of the food-based schemes. Despite these legal devices buttressed by welfare schemes, designed to check the marginalization of the tribal peoples and guarantee security of land tenures to tribal communities, current struggles of the tribal peoples have coalesced precisely around demands for autonomy, separate land legislation, and a different administrative system.

Given the notion of duty in the concept of rights, social justice and equity is a major discussion point in Indian polity. Recently, one of the main discussions has centred on revising the mechanisms to identify the "poor," in order to better target them. An Expert Group under the chairmanship of N.C. Saxena outlined the contours of the revised scheme in 2009 for identifying those eligible for social assistance (Government of India, 2011). This scheme was more sensitive to vulnerable households and favoured groups such as agricultural labourers, destitute households, mahadalit castes, women-headed households and those comprised entirely of seniors (Roy, 2011). The oppressed and downtrodden are commonly known as "Dalits," a term often used interchangeably with the scheduled castes in India. The new category of "mahadalits" would mean the super oppressed in society.

Scholarly analyses of the Report have pointed out that these methodologies treated the SC populations across states very differently but more to suit their inclinations and projected political benefits. In only two of the states (Bihar and West Bengal), was there any similarity in following the methodology – more SC households were classified as "poor" according to the 2009 methodology as compared to former estimates. That was the only similarity between the SCs in West Bengal and Bihar. The state government's introduction of the mahadalit category for the purpose of recensing the poor complicated the scenario. In Bihar, the SCs have been bifurcated by the order of the state government into scheduled castes/dalits and mahadalits in 2007, ostensibly to better target communities that were backward. Over the years all castes in Bihar have been categorised as mahadalit except the Dusadh caste, a typical surname of the caste being Paswan.

CONCLUSIONS

The main concern here is with equity. However, it is necessarily related to concepts and peculiarities of community development. Basic to any strategy that would ensure equity for all is a legal framework that takes into account all peoples' notions and indicators of poverty and their own strategies to development of the resources. The critiques by Amartya Sen on the question of development strategies and poverty alleviation do underline the need for such an approach or recourse. Understanding poverty in terms of development of capabilities and entitlements has

an advantage when dealing with different communities. He specifically focuses on legal issues of "entitlement" in the study of development (Sen, 1984; Sen, 1999).

Analysis of legal shifts with reference to natural resources ownership and control enable us to understand how, for instance, the decline in access to, and the degradation of common property resources can result in changes of ownership endowments, and consequent entitlement failures. Thus, Sen underlines the role of laws and legality both in bestowing and transferring endowments, and in providing an individual with entitlements to meet her/his needs.

Different communities in India, representing distinct cultures, have their own perceptions and indicators of poverty and well-being as well as their own ideas of strategies for poverty reduction and equity. Nonetheless, these diversified concepts of poverty are often not incorporated in national strategies, thereby reflecting their general political marginalization. Therefore, the challenge to development and equity is twofold: on the one hand, all peoples have the same right to development, resources and services as all other peoples; on the other, it must be recognized that the nature of the aspirations for development, resources and services of some (say the tribal communities) may be fundamentally different from those of others (scheduled castes). To answer to such imperatives of justice in a context of diversity and plural voices, the principle of equality should be balanced by taking into account the principle of equity. Henceforth, development strategies must thus be designed to overcome the marginalization and at the same time ensure the rights of all peoples.

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L'ÉQUITÉ ET LES INÉGALITÉS EN INDE: INTERPRÉTATIONS ET RÉALITÉS MULTIPLES

En Inde, la problématique de la lutte à la pauvreté est indissociable d'une prodigieuse diversité des contextes et des conditions. Aux écarts entre statuts socioéconomiques s'ajoutent les écarts entre statuts socioculturels, avec en trame de fond un foisonnement de castes, sous-castes, tribus, groupes religieux ou groupes linguistiques, sans oublier la variété des conditions géographiques et climatiques que renferme le sous-continent. Au centre de cette lutte, nous retrouvons les *scheduled castes* (SC) et les *scheduled tribes* (ST), groupes identifiés de façon juridique comme étant particulièrement vulnérables et, ce faisant, jugés en droit de recevoir quelque aide de la part du gouvernement – soit-elle matérielle ou d'ordre plus symbolique, à savoir, consacrée à l'amélioration de leur statut identitaire vis-à-vis d'autres groupes de la société. Les *dalits*, traditionnellement des castes intouchables, et les *mahadalits*, catégorie définie plus récemment et qui engloberait les castes « super-opprimées » de la population, sont aussi inclus dans cette liste de groupes qui bénéficient de leviers législatifs, politiques, et économiques visant à soutenir leur combat contre la pauvreté.

Nombre de politiques, programmes et législations participant à la lutte contre la pauvreté en Inde n'ont pas suffisamment pris en compte cette diversité. Une connaissance insuffisante des variations culturelles du concept d'*équité* est à la source d'échecs pratiques ou empiriques dans la lutte à la pauvreté. Il s'agit d'un problème à la fois théorique et juridique.

Dans son sens usuel, l'équité concerne la notion de justice, de modération raisonnable des principes, des lois, ou des jugements. Mais c'est surtout à sa connotation légale que le présent article fait référence. Dans le monde anglo-saxon, son origine juridique remonte aux temps précédant l'élaboration de la *Common Law*, où le Roi pouvait juger de certains dossiers de façon discrétionnaire et selon « sa propre conscience ». Puis, avec l'évolution des cours de justice, les jugements d'équités furent exercés par des représentants du Roi dans ces domaines où la *Common Law* était jugée trop rigide ou sans application pragmatique. Dans l'État moderne occidental, les cours d'équité furent incorporés à même la *Common Law* ; en Inde, c'est entre autre ce à quoi visait le *Specific Relief Act* de 1963.

Suivant cette dénomination légale, il s'agit alors d'un recours à l'équité venant « d'en bas », c'est-à-dire venant des communautés concernées par une législation donnée, et qui souhaiterait en façonner le contenu ou l'application pour mieux l'adapter à leur propre réalité. Pour ces communautés, l'équité constitue une opportunité de définir la pauvreté dans leurs propres termes, mais également de définir les *moyens* et *fins* dans leur lutte à la pauvreté. Pour Sen, la poursuite du pluralisme en Inde s'ancre à même une tradition nationale, méconnue par plusieurs, d'acceptation et d'inclusion des différences, une tradition d'ouverture et pour ainsi dire d'hétérodoxie. Sen rappelait que le mot sanskrit signifiant acceptation est « *swikriti* », et ne connote pas tant l'acceptation par tous d'un mode de vie uniforme et égalitaire, mais bien l'acceptation de la diversité et le droit de différents groupes de poursuivre leur propre trajectoire.

Force est toutefois de constater que la lutte à la pauvreté, en Inde, s'est souvent effectuée en dépit d'une reconnaissance de ces multiples trajectoires. Les *Poverty Alleviation Programmes* (PAPs) mis en place par le gouvernement indien durant les années 1980 et 1990 comptent parmi les exemples les plus probants de cette incompréhension de la pluralité du concept d'équité. Ces programmes visaient à redresser les statuts et conditions de vie des SC et ST, mais ne différenciaient pas suffisamment les moyens et les fins de la lutte à la pauvreté pour les communautés concernées. Plus concrètement, ces programmes visaient une exposition accrue des communautés au marché, puis aux valeurs monétaires, avec pour conséquence attendue un déclin de la pauvreté, du chômage et des migrations. Il était implicitement supposé que ce qui était efficace et souhaitable pour les SC, à peu de chose près, l'était également pour les ST.

Or, les conditions de vie, les pratiques économiques et culturelles des ST ne peuvent être assimilées à celles des SC, et ne peuvent donc se satisfaire de programmes identiques. Par exemple, plusieurs ST ne possèdent pas de terres agricoles, ou encore dédient une part importante de leur travail à des activités de pêche et de chasse (dans des forêts qu'elles possèdent de façon collective). Pour ces ST, par conséquent, une plus grande exposition aux marchés ne signifie pas pour autant un déclin de la pauvreté. Même qu'une introduction aux marchés pourrait aller contre les volontés, c'est-à-dire contre les *finalités*, que poursuivent les ST concernées. Plusieurs tribus participent à une production autosuffisante et non à une économie de consommation telle qu'induite par l'économie du marché et l'industrialisation.

En somme, si des différences tangibles peuvent être observées entre les deux catégories générales sur lesquelles étaient centrées les PAPs, soit les SC et les ST, que pourraient à présent nous révéler des comparaisons entre différentes communautés à l'intérieur ou entre ces deux catégories, sinon davantage de diversité ? D'où la nécessité d'appuyer la lutte à la pauvreté en Inde sur les définitions, stratégies et aspirations des acteurs mêmes des communautés spécifiquement concernées par tel ou tel programme. Il s'agirait là d'un moyen de mieux respecter l'équité dans ses multiples variations culturelles, et conséquemment d'aller à l'encontre d'une conception monolithique de l'appareil législatif indien. C'est dire, en conclusion, qu'il faut donc miser en faveur d'une ouverture, d'un pluralisme de l'équité et de la loi en Inde.