



# ASMA JAHANGIR MEMORIAL LECTURE



ON ECONOMIC JUSTICE

Dr Pervez Tahir  
Islamabad  
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# On economic justice

Asma Jahangir Memorial Lecture



Human Rights Commission of Pakistan

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### **About the speaker**

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### **About the lecture series**

The Asma Jahangir Memorial Lecture was instituted by the Human Rights Commission of Pakistan in 2020 in honour of the organisation's co-founder and former chairperson to give greater visibility to her vision of a society founded on principles of equality, dignity and justice for all.

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# On economic justice

Madam Chair  
Distinguished guests  
Ladies and gentlemen

I must begin by thanking the Human Rights Commission of Pakistan for inviting me to deliver the third Asma Jahangir Memorial Lecture. It is a pleasure as well as an honour.

My earliest memory of Asma is as a school girl. Those were the days of the students' movement against the rights usurper, Ayub Khan. Economic injustice was the main driver of the movement.

The late Justice Sabihuddin Ahmed and I were in our master's degree at Government College in Lahore. He was staying at the Gulberg residence of Malik Ghulam Jilani, his uncle, who was known for challenging the tyrannical regime. On most weekend evenings, I would ride my bike to be there for political *gup shup* [conversation].

As we squatted on mattresses in the veranda of the house, we exchanged greetings with whoever entered or exited the house, including the two Jilani daughters. What greater pleasure can there be than celebrating the memory of someone you first saw as a teenage girl who then surpassed all of us as a fearless leader and an outstanding champion of the rights of the weak and the exploited?

It is an honour to deliver this lecture after the venerable I. A. Rehman, a mentor since my short stint at *The Pakistan Times* in 1973–74 and the unadulterated democrat, Senator Raza Rabbani. I would only be elaborating further on Rehman sahib's message in the first lecture on the fundamentality of economic rights and Senator Rabbani's lament on the systematic manipulation of rights enshrined in the Constitution.

In Nobel laureate Amartya Sen's view, it was 'hard to find a measure of Asma Jahangir's greatness.' It is, might I say, harder to find a measure of economic justice, in Sen's great book, *The Idea of Justice*. Is it income inequality or the inequality of opportunity? Is it regional inequality that led to the breakup of the original Pakistan in 1971 and the marginalisation of Balochistan in present-day Pakistan? What about gender inequality? The incidence of poverty?

Broadly, income inequality has been used as an indicator of economic injustice. This does not mean that the resulting policy implications of working towards income equality or equality of opportunity gained official recognition.

In his speech at the inauguration of the State Bank of Pakistan in 1948, the founder of the state warned that the Western economic system had 'failed to do justice between man and man.' However, the message was lost in the first three five-year plans. Trained in colonial economics at Oxbridge colleges, the bureaucracy conceived the first plan with the objective of placing economic development before social development. A lack of political consensus delayed it for two years. The military coup in 1958 sidelined the quarrelling political class. The next two plans executed by a garrison state had a clear philosophy: the road to ultimate equality lies through initial inequality. Later, Mahbub ul Haq, the chief architect of these plans, admitted that 'in 1968, while the international world was still applauding Pakistan as a model of development, the system exploded not only for political reasons but for economic unrest.' A half-hearted attempt to launch the fourth plan with a set of 'socioeconomic objectives' failed.

The period 1968–71 witnessed mass mobilisation against gross economic injustice done to the people and regions by a centrist militarised state dominated by one region. The region exploited most, separated. In what was left of Pakistan, the return to democracy provided an opportunity to agree on a framework to deliver economic justice.

In 1973, Pakistan's first democratic consensus produced a constitution laying down the rights of the people and the obligations of the state.

In the Preamble, social justice—of which economic justice is a subset—and equality—of which economic equality—is a subset, were included in the principles to be observed:

The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.

Economic justice also found a specific mention in the Preamble, besides equality of opportunity. An order was to be established 'wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.'

In the introductory Part I, Article 3 endorsed the centre-point of economic justice, the 'elimination of exploitation.' It promised that 'The State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability to each according to his work.'

Preambles and introductions are expressions of good intentions. Constitution-making before 1973 fell short even in terms of intentions to move towards an economically just society. The intention then was to enlarge the economic pie. It was realised but only for 22 families, laying down the foundation of grave economic injustice. Achieving intended consequences requires inalienability of rights, well-thought-out policies and resources. Under the 1973 Constitution, an attempt was made to spell out ways to move towards the intended consequences.

A separate part, Part II of the Constitution, focused on Fundamental Rights and Principles of Policy, including broadly the areas related to economic justice. Human rights were covered under Fundamental Rights. Many of the economic rights recognised as human rights in the International Covenant on Economic, Social and Cultural Rights 1966 were made part of the Principles of Policy.

Articles 9–28 in Chapter 1 on Fundamental Rights relate overwhelmingly to human rights in the political, legal and social spheres, besides the protection of property rights. No article bears directly on economic justice. Fundamental rights are protected by the provisions prohibiting their suspension and enactment of laws inconsistent with them. Legal recourse is available against their violation.

A new article, Article 25A on the right to education, was inserted under the Constitution (Eighteenth Amendment) Act 2010. It states: 'The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.' As it contributes to equality of opportunity, this is the only fundamental right falling under the rubric of economic justice.

According to the Annual Status of Education Report for 2021, issued by Idara-e-Taleem-o-Aagahi, 19 percent of children remained out of school even after a decade of declaring the right to education a fundamental right. In 2010, the year before Article 25-A was introduced, 20 percent of all children were out of school. As I said earlier, Chapter 2 on Principles of Policy contains most of the rights pertaining to economic justice. Article 32 calls for the promotion of local governments with the representation of peasants, workers and women. Effective local governance, with own powers to tax, are the tried and tested means of delivering basic public services. It took over 60 years for the provinces to secure their autonomy from the federal government under the 18th Amendment and their due share of resources under the Seventh National Finance Commission Award. In turn, it seems the provinces will take even longer to devolve responsibility.

responsibility with authority to the local level, despite the requirement under Article 140A(1) that ‘Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.’

The provinces dragged their feet in enacting laws, procrastinated over the functioning of local finance commissions and held local elections reluctantly after interventions by the courts. Article 34 stipulates the full participation of women in national life. Parts of Article 37 envisage the promotion of social justice by:

- Promoting the educational and economic interests of backward classes or areas.
- Removing illiteracy and providing free and compulsory secondary education within the minimum possible period.
- Making technical and professional education generally available and higher education equally accessible to all on the basis of merit.
- Making provisions for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.
- Enabling the people of different areas—through education, training, agricultural and industrial development and other methods—to participate fully in all forms of national activities.
- Decentralising the government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.

As can be seen, ladies and gentlemen, this is an exhaustive agenda.

From the point of view of economic justice, Article 38 on the promotion of people’s social and economic wellbeing is most relevant. As per the following clauses, ‘The State shall:



- Secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants
- Provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure
- Provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means
- Provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment
- Reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan.'

The long list of Principles of Policy would require the formulation of appropriate policies. Article 29(1) makes it 'the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority.'

Resourcing this large set of policies would be a challenging task. Article 29(2) provides a rider: 'In so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources.'

So money makes the mare go. Unfortunately, the consistently imprudent fiscal policies pursued since the adoption of the 1973 Constitution have forced Pakistan to seek International Monetary Fund (IMF) assistance 23 times. In FY1976, the fiscal deficit was as high as 9.6 percent of GDP. The

Source: [ibid.](#)

average was 7 percent in the 1980s, 6.8 percent in the 1990s, 4.4 percent in 2000s and 6.5 percent in 2010s. In FY2022, the fiscal deficit touched a high of 7.9 percent of GDP, accompanied by its twin, a current account deficit of 4.6 percent of GDP. This means that the country had to borrow for debt servicing, pensions and monuments to development. There was very little left for policies to promote economic justice.

The state is not obligated to do what it cannot due to the resource constraint, but it can at least do what it can without much cost. There is a Constitutional requirement to report the state of affairs. Article 29(3) demands that 'In respect of each year, the President in relation to the affairs of the Federation, and the Governor of each Province in relation to the affairs of his Province, shall cause to be prepared and laid before each House of Majlis-e-Shoora (Parliament) or, as the case may be, the Provincial Assembly, a report on the observance and implementation of the Principles of Policy.'

Believe it or not, ladies and gentlemen, the governments, both federal and provincial, have not submitted this report on the observance and implementation of the Principles of Policy for the past several years. Violation of fundamental rights is justiciable, although one has not seen any action in the case of gross negligence in the implementation of Article 25-A. Or is this fundamental right also subject to the availability of resources?

In the case of Principles of Policy, the courts have begun to look at fundamental rights in the context of the Principles. In October 2021, a group of rights activists filed a petition in the Supreme Court on the noncompliance of Article 29(3). Their plea was that, 'by not placing the required reports before the parliament or before provincial assemblies, the nation has been deprived of the right to know annual progress of the country. This amounts to an act of fraud played by the federal and the provincial governments on the public at large.' Citing a 1988 judgement in the Benazir Bhutto case, the petitioners maintained that, 'on several

occasions it has been held by the Supreme Court that the implementation of fundamental rights are to be read in conjunction with the principles of policy in order to establish an egalitarian society.'

In the judgement of a case of denial of inheritance to the sister by brothers in August 2021, Justice Qazi Isa observed that 'economic deprivation of women prevents their full participation "in all spheres of life" which is [a] principle which is violated.' The state has 'to act in accordance with those principles' and respect Article 29(3).

Judicial activism, found in Article 9 of Fundamental Rights is a fountainhead for adjudicating on the non-justiciable, resource-constrained rights under the Principles of policy. Related to 'security of person', this article states: 'No person shall be deprived of life or liberty save in accordance with law.' As per Article 184(3), 'the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article.' Most relevant here is the case of rights activist Shehla Zia against the Water and Power Development Authority in 1994 whereby the Supreme Court decided that the right to life included the right to a healthy environment.

Judicial activism of extending the interpretation of the right to life might alleviate the sufferings of aggrieved individuals, but cannot provide economic justice to the entire population. As Justice Qazi Isa has rightly observed in the judgement mentioned earlier, the state has 'to act in accordance with those principles' of policy, but it has failed to do so in the past fifty years or so.

The same can be said of the judiciary. Take the case of Article 38 (a) to 'secure the well-being of the people... by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment

of rights between employers and employees, and landlords and tenants.’ The Land Reforms Act 1977 was enacted to take forward this principle. In 1990, the Shariat Appellate Bench of the Supreme Court held it repugnant to the injunctions of Islam. Abid Hassan Minto filed a petition to review this verdict in the Supreme Court in 2011. It did not come up for hearing before 2013, with the most activist chief justice in our history flatly declining to nullify the decision of the Shariat Appellate Bench.

Article 38(e) on reducing the ‘disparity in the income and earnings of individuals’ roughly captures the definition of economic justice. Before the adoption of the Principles of Policy in 1973, the economy was characterised by extreme inequalities of income. Implementing economic policies consistent with the Principles and reporting progress to the Parliament regularly for effective monitoring would have led to an economically just society. Instead, the focus shifted to donor-driven strategies of poverty reduction. Small wonder that the country has earned the epitaph of a ‘one-percent republic’. According to the Pakistan National Human Development Report 2020, the share of the richest 1 percent of the population in national income is 9 percent and that of the poorest 1 percent is a mere 0.15 percent. Again, the richest 10 percent have 9.42 times the income of the poorest 10 percent. The situation is no different from the failure of the trickle-down in the 1960s. In fact, it is worse now as there is no growth. There is nothing to trickle down. In the current year, GDP growth is expected to be less than 2 percent, which means a decline in income per capita.

The failure of successive governments to achieve self-sustained inclusive growth has brought upon us what Human Rights Watch describes as the ‘worst economic crisis in history.’ An IMF programme, with the harshest ever terms, is about to be in place. The resulting imposition of austerity and adjustment, additional taxation and high administered prices will keep GDP growth low and inflation will be in the range of 35–40 percent.

Ladies and gentlemen: in the present time of political uncertainty, social polarisation and tenuous economic fundamentals, how does one talk

about economic justice? In the medium term, the objective should be to enforce a fair distribution of the burden of sacrifice. Towards this end, the following steps are essential.

- The taxation system is burdened with tax expenditures of over a trillion rupees for the privileged elite. These should be eliminated forthwith and the money diverted to the Benazir Income Support Programme for conditional cash transfers to implement the Principles of Policy, directly impacting the lives and livelihoods of the downtrodden.
- Incomes of large landholders must be subject to normal income taxation.
- Wealth tax, inheritance tax and estate duties need to be reimposed.
- There should be no increase in indirect taxes.
- The size of the federal government should be cut down in conformity with the 18th Amendment.
- As federal development spending is financed totally by borrowing, it ought to be reduced to zero until the budget is balanced.
- Defence expenditure has a tail longer than is necessary. It is time to improve the tooth-to-tail ratio.
- The provinces should devote 50 percent of the development budget and provide a corresponding current budget to fully comply with Article 25-A within two years.
- Property tax should be fully devolved to the local governments for effective public service delivery.
- Trade in the region must be opened up to deal with the current account deficit.

Beyond the medium term, any serious move towards the road to economic justice will have to focus on reducing income inequality. High economic growth is not the answer, as the Chinese experience shows. High growth reduced absolute poverty, but inequality increased. As a matter of fact, the capacity of growth to reduce poverty is greater, the more equal the income distribution. Experiments in other countries show that the universal basic income approach is an effective means to reduce inequality.

I thank you, ladies and gentlemen, for your patience.