

National experience with the right to development

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I. Introduction

The widespread acceptance and pursuit of the Millennium Development Goals represent a major consensus by the development community to eliminate poverty and accelerate human development. Two streams of thought have strongly influenced global and national strategies: the human development approach and the right to development approach. Defined broadly as an enhancement of capabilities, a widening of choices and an expansion of freedoms, human development calls on policymakers to focus on people and what they cherish and value in life.¹ In the human development framework, human poverty is viewed as a denial of freedoms—economic, social, cultural and political. Such denials are traced to inadequacies and inequalities in the distribution of opportunities between women and men, across regions, between rural and urban areas and within communities. The exercise of tracking progress extends beyond merely monitoring trends in economic variables (which are no doubt important) to assessing changes in the quality of people's lives. The focus shifts from an emphasis on economic growth to examining whether the benefits of growth are contributing equitably to tangible improvements in the lives of people.

The idea of human development has been substantially enriched by the human rights discourse. Human rights and human development “share a common vision and a common purpose—to secure the freedom, well-being and dignity of all people everywhere”.² The human rights arguments draw attention to fairness and justice in processes, not simply outcomes. Amartya Sen explains the complementarities between the two streams of thought:

[F]reedoms depend also on other determinants, such as social and economic arrangements (for example, facilities for education and health care) as well as political and civil rights (for example, the liberty to participate in public discussion and scrutiny)... Viewing development in terms of expanding substantive freedoms directs attention to the ends that make development important, rather than merely to some of the means that, inter alia, play a prominent role in the process.³

From a rights perspective, the persistence of human poverty is the result of a denial of basic entitlements to education, health, nutrition and other constituents of decent living.⁴ The ending of human

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¹ For a set of papers on human development, see Sakiko Fukuda-Parr and A.K. Shiva Kumar, *Handbook of Human Development Concepts, Measures, and Policies* (New Delhi, Oxford University Press, 2009).

² United Nations Development Programme (UNDP), *Human Development Report 2000: Human Rights and Human Development* (New York, Oxford University Press, 2000), p. 1. See also *Human Development Report 1998: Consumption for Human Development*.

³ See Amartya Sen, *Development as Freedom* (New Delhi, Oxford University Press, 1999), p. 3. See also Sen, “Population policy: authoritarianism versus cooperation”, International Lecture Series on Population Issues (John D. and Catherine T. MacArthur Foundation, New Delhi, 1995) and “Wrongs and rights in development”, *Prospect*, 20 October 1995. Available at www.prospectmagazine.co.uk/1995/10/wrongsandrights indevelopment/.

⁴ For a comprehensive discussion see, in particular, *Human Development Report 2000*; Commonwealth Human Rights Initiative, *Human Rights and Poverty Eradication: A Talisman for the Commonwealth* (New Delhi, 2001); Centre for Development and Human Rights, *The Right to Development: A Primer* (New Delhi, Sage Publications, 2004); and Arjun Sengupta, “The human right to development”, *Oxford Development Studies*, vol. 32, No. 2 (June 2004).

poverty, therefore, calls for an assurance of basic entitlements as rights of citizens. The State is principally obligated to ensure universal access to basic social and other services and to create an enabling environment for the assurance of human rights. The right to development approach has the force of being based on both moral consensus and legal obligations. It is a practical means for policy setting that enables policymakers to choose appropriate processes and create and reorient public structures. By emphasizing accountability, transparency and rule of law, it demands the adoption of democratic methods of implementation and gives primacy to participation, protection and empowerment of the poor.

Against this background, section II discusses critical issues in the adoption of a right to development approach to policy formulation. Section III describes some of the recent policy shifts in India that have been strongly influenced by rights-based arguments. Section IV discusses the challenges faced by policymakers. The concluding section V identifies ways of strengthening public action for promoting the right to development approach.

II. Issues

Several issues, some more resolved than others, continue to dominate policy discussions surrounding human rights and development. The first has to do with the universalism of human rights. The idea that a “universal” set of rights enjoys validity across different religions, traditions and customs has often been questioned by some policymakers and practitioners. Debates tend to become polarized, for instance, when religious leaders or cultural experts call for preserving the social sanctity and identity of local cultures. Some go to the extent of arguing that a Western notion (or ideal) of equality and justice has little relevance or applicability in other cultural contexts. Similar opposition is encountered when advocacy for women’s rights or sexual rights begins to question many age-old beliefs and practices that deny women and others equal opportunities. Sometimes even the non-threatening notion of child rights has been questioned: do children really have rights? Can a six-year-old decide whether to go to school or not? The intensity of such opposition has, however, declined significantly over the years. Yet it still persists among those who tend to justify violation of rights and denial of freedoms on the grounds that such social practices and cultural traditions have the approval of society.

A second issue has to do with prioritization of rights. Do some rights have precedence over other rights? Can the rights of some groups (the poor) have precedence over the rights of the non-poor? While it is true that rights are indivisible and no one set of rights is superior to another, practitioners point out that it is only in exceptional cases that we can find win-win situations where all stakeholders benefit. By and large, with most interventions there are bound to be winners and losers. Policymakers are typically confronted with having to choose between rights (and define priorities). When this happens, it is likely that one group’s rights would be overridden by another’s. This occurs when limited financial resources have to be allocated for the fulfilment of competing rights. A third issue has to do with collective responsibility for assurance of rights. Fulfilment of rights calls for effective partnerships to find collaborative, constructive and creative solutions. From a practical viewpoint, however, collective responsibility very soon becomes nobody’s responsibility. Coordination and convergence become critical for successful implementation, but in reality both are difficult to guarantee. Who is to be held responsible for effective implementation and accountability? The State might be required to ensure coordination between different stakeholders; however, this is easier said than done.

A fourth issue has to do with the emphasis on processes. In the right to development approach, processes adopted for formulating policies or implementing programmes should not violate the rights of individuals, especially of the poor and the voiceless in society. Processes should respect the dignity of human beings. The challenge, however, is to assess whether or not the process adopted has been fair and just. Many countries find themselves confronted with difficult situations. For instance, a State might have to decide whether or not it should extend modern medicine and modern health care to primitive tribal communities. Some might argue that this decision should be left to the communities themselves since they are best placed to calibrate the pace and manner of their modernization. On the other hand, others might argue that it is not morally right to deny access to primary health care and education to children in such communities. Easy answers to these sensitive questions are difficult to find. However, this cannot be the reason for not thinking through the validity of processes using the principles of human rights and justice. Effective and practical solutions to some of these issues can be found through public discussion and dialogue with multiple stakeholders.

III. The experience of India

Experience in India suggests that public debates and discussions centred around the right to development can contribute significantly to the formulation of new laws and policies that are particularly beneficial to the poor. Some of these initiatives are described below.

National Population Policy 2000. The formulation of the National Population Policy 2000 was strongly influenced by a network of civil society organizations, prominent citizens and social activists who advocated successfully to keep coercion, penalties and disincentives out of India's family planning programmes. The network campaigned to highlight the importance of women's empowerment and a rights-based approach. It advocated that population stabilization is best achieved by seeking the cooperation of people, by treating women with respect and by recognizing the human rights of individuals.⁵ Such a campaign and the public debates it generated had a positive effect in keeping at bay the views of those who supported population "control" and called for limiting the number of children a family (or woman) could have. The network used evidence to argue why enforcing a one-child norm like China, or even a two-child norm, is impractical, unnecessary and undesirable. In countries of South Asia and China, with a strong son preference, such restrictions on family size inevitably promote discrimination against girl children. Imposing penalties makes little sense when most people, even the poorest, those living in rural areas and those belonging to socially disadvantaged communities, want to have fewer children. Moreover, any attempt to impose penalties is biased against the poor, the illiterate and socially disadvantaged groups in society, the same groups that have historically faced discrimination and neglect.⁶ The network's efforts paid off. India's National Population Policy 2000 affirms the commitment of Government to "voluntary and informed choice and consent of citizens while availing of reproductive health care services, and continuation of the target free approach in administering family planning services".

Right to Food Campaign. The Right to Food Campaign is an informal network of organizations and individuals committed to the realization of the right to food in India. It was formally launched when a writ petition was submitted to the Supreme Court in April 2001 by the People's Union for Civil Liberties, Rajasthan, demanding that the country's huge food stocks should be used without delay to protect people from hunger and starvation. The Campaign believes that the primary responsibility for guaranteeing basic entitlements rests with the State. Realizing this right requires not only equitable and sustainable food systems, but also entitlements relating to livelihood security such as the right to work, land reform and social security.⁷ In addition to generating strong evidence for advocacy, the Campaign has also used the judiciary to extract several benefits for the poor. The petition filed in April 2001 led to prolonged public interest litigation. Supreme Court hearings were held at regular intervals and several "interim orders" have been issued from time to time. However, it soon became clear that the legal process alone would be insufficient. This motivated the Campaign to build stronger public support and a wider coalition for the right to food. It initiated a wide range of activities including public hearings, rallies, protest marches, conventions, action-oriented research, media advocacy and lobbying with Members of Parliament to further the demands. The Campaign has had a strong influence on many matters besides the right to food. The Campaign made a significant contribution to the new initiative to introduce cooked midday meals in all primary schools following a Supreme Court order of April 2004 and in influencing the Indian Parliament to enact the Mahatma Gandhi National Rural Employment Guarantee Act in August 2005. The Campaign continues to play an important role in shaping a National Food Security Bill under consideration by the Government of India. Other areas of its contribution include the universalization of the Integrated Child Development Services for children under the age of 6, the revival and universalization of the public distribution system, social security arrangements for those who are not able to work and equitable land rights and forest rights.

Right to Information Act 2005. Founded in 1996, the National Campaign for Peoples' Right to Information, a platform of over 350 individuals and organizations, has played, and continues to play, a critical role in promoting the right to information. This is a major part of the Campaign's commitment to

⁵ Sen, in "Population policy", presents several philosophical and other arguments denouncing the use of coercion and arguing in favour of cooperation as the preferred and only way to achieve rapid population stabilization. Also see A.K. Shiva Kumar, "Population stabilization: the case for a rights-based approach", *Journal of the National Human Rights Commission (India)*, vol. 2 (2003).

⁶ See the arguments in A.K. Shiva Kumar, "Population and human development: contemporary concerns", in *Handbook of Population and Development in India*, Pradeep Panda, Rajani Ved and A.K. Shiva Kumar, eds. (New Delhi, Oxford University Press, 2010).

⁷ See the Campaign's website, www.righttofoodindia.org/.

make the Government and society more transparent and accountable. In the beginning, the Campaign's primary objective was to bring in a national law facilitating the exercise of the fundamental right to information. As a first step, in 1996, the Campaign and the Press Council of India formulated and submitted to the Government an initial draft of a right to information law. In response, following years of advocacy and public discussion, the Government introduced the Freedom of Information Bill in Parliament in 2002, a watered-down version of the 1996 bill drafted by the Campaign and others. In August 2004, based on extensive discussions with civil society groups, the Campaign forwarded to the National Advisory Council a set of suggested amendments to the Freedom of Information Act 2002. The Council endorsed most of the suggested amendments and recommended them to the Prime Minister of India for further action. These formed the basis of the subsequent Right to Information Bill introduced in Parliament in December 2004. However, this bill, as introduced in Parliament, had many weaknesses. Most significantly, it did not apply to the whole country but only to the Union Government. The public outrage as well as the sustained efforts of the Campaign forced the Government to review its stance and ultimately endorse the stand taken by the Campaign in most matters. During the next session of Parliament, the bill was passed after more than 100 amendments had been introduced by the Government to accommodate the recommendations of the Parliamentary Committee and the Group of Ministers. Most significantly, the jurisdiction of the bill was extended to cover the whole of India. The Right to Information Act came into effect all over India in October 2005. Since then, the Campaign has been a driving force behind the enactment and proper implementation of the Act.⁸

National Commission for the Protection of Child Rights 2007. Strong advocacy for child rights by several non-governmental organizations, national and international, led India, through an Act of Parliament, to set up the National Commission for Protection of Child Rights in March 2007. The Commission's mandate is to ensure that all laws, policies, programmes and administrative mechanisms are in consonance with a child rights perspective as enshrined in the Constitution of India and also in the Convention on the Rights of the Child. The Commission adopts a rights-based perspective to:⁹

- Guide public awareness, protect children's rights and create a moral force to stand by children
- Identify gaps in policy and legal frameworks and make recommendations to ensure adherence to rights-based perspectives
- Take up specific complaints that come up before it for redressal of grievances
- Take up *suo moto* cases, summon the violators of child rights, present them before the Commission and recommend to the Government or the judiciary action based on an inquiry
- Undertake research and documentation to generate evidence to ensure protection and promotion of child rights

The Commission has become a strong voice for the protection of child rights. Following the lead of the Government of India, many state governments are also setting up state commissions for the protection of child rights.

Right of Children to Free and Compulsory Education Act 2010. Another landmark achievement of sustained campaigning by a number of civil society organizations has been the eighty-sixth amendment to the Constitution of India making education a fundamental right of children. Enacted on 1 April 2010, this law provides for free and compulsory education to all children between 6 and 14 years. Every child in this age group is to be provided eight years of elementary education in an age-appropriate classroom in the vicinity of his or her neighbourhood. All costs that might prevent a child from accessing school will be borne by the State, which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of eight years of schooling. No child shall be denied admission for want of documents; no child shall be turned away if the admission cycle in the school is over; and no child shall be asked to take an admission test. Children with disabilities will also be educated in mainstream schools. All private schools shall be required to enrol children from weaker sections and disadvantaged communities in their incoming class to the extent of 25 per cent of their enrolment by simple random selection. No seats in this quota can be left vacant. These children are to be treated on a par with all the other children in the school and will be subsidized by the State. All schools are required to adhere to prescribed norms and standards laid out in the Act. Schools that do not fulfil these

⁸ See the Campaign website at <http://righttoinformation.info>.

⁹ See the Commission website at <http://ncpcr.gov.in>.

standards within three years will not be allowed to function. All private schools are required to apply for recognition. Norms and standards of teacher qualification and training have been laid down. Teachers in all schools will have to subscribe to these norms within five years.¹⁰

Several features characterize the acceptance and adoption of rights-based policies and laws in India. Most striking is the role of strong networks and campaigns in championing such policies and legislation. The campaigns have invested resources in building a strong coalition of support by generating evidence in support of their arguments, disseminating the findings, generating public discussion and communicating more widely with a broad audience. Such efforts have been backed by strategic forms of protest that have attracted the media to highlight and keep alive the issues in the public agenda. The campaigns have also had to resort to judicial interventions, for instance, in matters relating to enforcement of the right to food where the Supreme Court has played a key role in guaranteeing rights to children. Several more laws that recognize the human rights and dignity of people are under consideration in India. These include the Right to Health Bill, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, the National Food Security Bill as well as the Domestic Workers (Registration, Social Security and Welfare) Act. These bills have been the subject of intense public discussions and debate largely due to the advocacy and backing they have from organized networks. While support for rights-based approaches to policy is gaining momentum, there are several practical challenges faced by both the State and human rights activists.

IV. Challenges

The first real challenge has to do with resources. The State needs sufficient financial and other resources as a prerequisite for the fulfilment of the fundamental rights of every citizen. No country, for example, can assure good quality education for every child, maternal benefits for every mother, safe drinking water, adequate nutrition or health care for all without adequate resources. Dealing with the issue of financial resources is as much a matter of political priorities as it is of economics. Several steps are involved in ensuring adequacy of resources. Effective economic policies are needed to generate adequate growth. These ought to be accompanied by effective tax poli-

cies in order to mobilize adequate financial resources for investment in development. Major opposition to raising taxes or introducing new taxes often comes from prosperous business groups, property owners and high-income earners. Political opposition is also common when it comes to withdrawal of “perverse” subsidies or even rationalizing of bus fares, water and electricity tariffs. These seemingly straightforward economic decisions take on political overtones as a result of which economic rationality is often compromised. Once resources have been mobilized, an equally serious challenge is to ensure adequate allocations to the appropriate sectors. Powerful vested interests and influential lobbies often make it difficult for the voices of the poor to be heard; this typically distorts patterns of public investment and expenditure. Correcting such distortions involves taking firm political decisions. The strong lobby behind military spending in both developed and developing countries often prevents even minor reallocations from defence to the social sectors. Public finance decisions should be guided by economic reasoning and not by political opportunism. Another important challenge has to do with assessing how the money is spent, where it goes and on whom it is spent. No poor country can “afford” waste, leakage and inefficiency. Ultimately, what is needed most is strong political determination to end corruption and malpractice.

The second challenge has to do with effective leadership. Political commitment and strong leadership among different stakeholders are essential for building a consensus and for mobilizing public support for a right to development approach. Such leadership is sadly lacking in many bureaucracies, in the judiciary, in local governments and in the private sector, especially when it comes to pro-poor reforms. Many nations, including India, tend to exhibit impressive leadership (and concern) for economic reforms. This is evident, for instance, from the recent discussions surrounding the global recession, disinvestment, liberalization and globalization. But the same kind of intellectual energy is sorely missing when it comes to health, education or social protection for the poor. Few Governments, for example, have taken seriously their constitutional pledge, as well as the ratification of several international instruments, to assure basic rights to citizens. The Declaration of Alma-Ata, adopted in 1978 by the International Conference on Primary Health Care, called for health for all by the year 2000. The year has come and gone and many developing countries are nowhere close to attaining the goal. Nations pledged in 1990 at the World Sum-

¹⁰ For details, see www.icbse.com/2010/education-rte-act-2009/.

mit for Children to fulfil many goals to ensure the survival, protection and development of children. Once again, these goals have not been met. Similarly, many leaders have failed to generate much-needed public support for the Millennium Development Goals and deliver on the promises made to people.

Deficiencies in assessment and evaluation pose yet another challenge to adopting a right to development approach. Little effort is made to gather specialized data on many vital dimensions of human rights and progress. For instance, in the field of education, many developing countries have failed to put in place systematic ways of assessing the learning achievements of children. As a result, it becomes difficult to judge the usefulness of many educational interventions such as improved teaching methods, revising the curriculum or increasing the number of teachers and classrooms. Similarly, while States put out data on access to safe drinking water, there is no systematic way of assessing the quality and safety of drinking water. Specialized and systematic data are seldom gathered on health. Data disaggregated by gender, location, ethnicity and so on are also not readily available in most countries. Issues relating to standardization of definitions and methodology, timing and quality of data need to be addressed as well. At the same time, it is important to move beyond reporting of numbers to evaluating progress by shifting attention away from geographical regions (rural-urban, provinces and districts) to concentrating on the well-being of people. This would require gathering information on progress made by different segments of society: women and men, children living in different regions, communities belonging to socially backward or disadvantaged groups and so on. Evaluations should focus on learning, non-discrimination and accountability. This calls for new and improved evaluation methodologies and instruments for assessing the complex realities of development.

The fourth challenge has to do with accountability and learning. Accountability, and therefore responsibility, lies at the heart of a right to development approach. Traditionally, accountability has been associated with financial accounting, reporting and audit. From a human rights perspective, accountability is to people, not to financial institutions and donors. Accountability is intended to promote awareness, transparency and learning. The stakeholder is required to reflect on why an intervention succeeded or didn't. Did the agency fulfil the role and responsibility assigned to it? Was the failure due to lack of

commitment, shortage of human resources, lack of capacity, or plain negligence? Has the agency given sufficient "voice" to the poor and underrepresented? Did the agency provide any early warning signals in the event of a "failure"? Did the agency initiate adequate steps to prevent mismanagement or collapse of the programme? Unfortunately, the culture of systematic development evaluation has yet to permeate many societies.

A fifth challenge has to do with partnerships and participation. Involving stakeholders at all levels—political, administrative and, particularly, the community level—is crucial to the success of pro-poor interventions. It is especially important to emphasize the participation of women. Active engagement and participation of women in decision-making has much to do with the way society views women's contribution, i.e., as marginal and not quite as meaningful as men's contribution. However, there are several issues that arise when the idea of participation is put into practice. Despite the well-established agency of women, there are far too few women involved in addressing issues of human development and resolving conflicts. It is easy to argue that processes must prevent both "unfair inclusion" and "unjust exclusion". It is also easy to emphasize that the consultation process must include non-governmental organizations (NGOs), civil society organizations, academia, the private sector, parliamentarians and others who have a role to play in the attainment of the Millennium Development Goals. It is equally important to argue for an open process of consultation with the intention of mobilizing the support of Government, civil society organizations and others in accelerating actions towards the Goals. However, in most cases, the responsibility for soliciting such participation and managing the process rests with the Government. And this is where some of the problems arise. Many Government officials have limited contacts with civil society movements that are typically seen as being adversarial to State policies and programmes. Few have the motivation to include NGOs openly and willingly in the policy formulation exercise. Nor do many Government officials have the necessary skills to resolve conflicts and offer leadership when such partnership is encouraged.

A last challenge has to do with weaknesses in legal frameworks. A major platform of the right to development is the legal backing for essential entitlements and access to remedy when these entitle-

ments are violated. However, in many countries, laws themselves are weak and even outdated.¹¹ For example, discriminatory personal law governs legal relations in matters such as marriage, divorce, maintenance, child custody and inheritance. In many African countries, it is customary property law that denies women equal access to property. Similarly, domestic violence and child sexual abuse are not explicitly seen as “legal” issues that require the law to offer protection to citizens. Laws relating to violence themselves constitute the greatest barrier to justice for women. In India, for instance, the definition of rape excludes all forms of sexual assault other than penetrative intercourse. The age of consent is defined as 15 years, contradicting the definition of an adult woman as one who is above 18 years of age. Rape by the husband is not considered an offence unless the “wife” is under 12 years of age, even though marriage with a minor is itself a crime. And women who cannot show physical proof of having resisted rape, in the form of injuries, are generally assumed to have consented. Also, the low conviction rates, apart from reflecting gross inefficiencies in the capacity of investigative agencies, tend to highlight other gaps in the system. Most citizens, and especially the poor, have very limited access to justice and legal aid in many countries. The thought of hiring a lawyer to get justice is frightening, if not prohibitively expensive for most citizens. An even more serious problem has to do with the mindsets and beliefs of lawyers and judges themselves who do not see injustices in the patterns of social arrangements governing the lives of ordinary people. They bring their own prejudices into decision-making. Compounding all this is the weak machinery for enforcement of legislation, which contributes to inordinate delays in the delivery—and thus denial—of justice, especially to the poor.

¹¹ See, for instance, the discussion on women’s rights in *Human Rights of Women: National and International Perspectives*, Rebecca Cook, ed. (Philadelphia, University of Pennsylvania Press, 1994) and Kirti Singh, “Obstacles to women’s rights in India” (*ibid.*), for a comment on legal obstacles facing the implementation of legal rights in India.

V. Concluding remarks

The right to development approach offers valuable insights to policy formulation needed to attain the Millennium Development Goals. This concluding section identifies a few areas where strengthened actions are likely to further advance the rights agenda.

To begin with, it is extremely important to create a culture in society where human rights are recognized, respected and promoted. It is equally important to spell out a theory of change and visualize the process of social transformation in a right to development approach. This exercise needs to begin by generating public awareness of and support for the universal values and principles governing human rights. The United Nations Millennium Declaration,¹² for instance, asserts the importance of six fundamental values: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. These values need to become a part of the public discourse. At the same time, efforts must be made to highlight instances of violations of human rights, especially when they are silent and invisible. More appropriate research, analysis, assessment, documentation and public debates are needed to educate policymakers and society on the nature of violations and the types of interventions that could yield desired outcomes. Realizing the Millennium Development Goals will also depend, to a large extent, on the fulfilment of goal 8, the commitments by rich nations to devote financial resources to realizing the Goals. It is necessary to build public pressure on “rich” countries to meet their commitments to end global poverty. Finally, achieving the Goals requires that policy discussions take place not in the confines of Government offices or academic institutions, but in open public spaces. Public reasoning and public support strengthen the hands of politicians and policymakers to take tough decisions. Building effective public pressure and public vigilance, which lie at the heart of the right to development approach, should become central to public action.

¹² General Assembly resolution 55/2.

