

EXPLORING LINKAGES OF RIGHTS BASED APPROACH TO DEVELOPMENT & THE HUMAN DEVELOPMENT APPROACH

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Human development approach (HDA) and rights based approach to development (RBA) have become major buzzwords among policy makers around the world in the last few decades. Though they developed in different intellectual communities the two approaches have a lot in common. In this paper, I hope to provide an introduction to rights based approach to development and outline some of its similarities with the human development approach. Like any introductory paper, this does not do justice to perspectives or debates in either of these approaches and I assume that the readers of this paper will cover other materials for a richer overview². The fundamental challenge I have taken up in this paper is to present some of the essential ideas as simply as possible in a way that the reader will be able to appreciate the links between the two approaches.

This paper is divided into two broad sections. Section 1 provides an introduction to rights and rights based approach. In this section I trace the evolution of rights with the state as the duty-bearer in the international context and then give a brief history of the rights approach in India. Apart from laying the conceptual foundation, I hope that this section will also provide a brief overview of prominent issues that have been taken up in the rights mode in India. Section 2 provides a brief discussion of similarities between RBA and HDA in terms of their philosophies, and how the two could be combined productively.

¹ I am a student of Maxwell School, Syracuse University. Prior to this I worked for several years with the Right to Food Campaign in India and with the National Alliance for the Fundamental Right to Education (NAFRE). Over the years I have gained an understanding about the subject of this paper from many people and I owe a large number a people my debts for everything I know. John Burdick, Elizabeth Cohen, Jean Drèze, Chandra Mohanty and Jackie Orr have been fantastic teachers whose classes have shaped my fundamental ideas that went into this paper. Vandana Bhatia, Rohit Mutatkar and Priyanka Varma, my friends at the Tata Institute of Social Sciences, have been supportive through this process and it is that team that convinced me to take up this project.

² (Alston & Robinson, 2005; UNDP & Jolly, 2000) have useful introductions to various aspects of rights and human development.

1. INTRODUCTION TO RIGHTS BASED APPROACH

In order to illustrate what the rights based approach is, let me start with the conception of a right. To put it simply we say that a person has a right when he or she has the claim do something or get something. For example the *right to free expression* means that individuals have the claim to speak their opinions freely and this should not be prevented by other individuals or organisations like the state. The same would go for right to free movement (at least within the country), to buy property, to participate in the labour market, and an assortment of other activities. In these cases the society has a duty to intervene if someone interferes with the right of these individuals. In case of other rights there is a demand on the society to play a more active role. For example, the right to education typically requires the state to arrange free public schooling and parents to send children to school³.

In the rights based approach we start by creating a right and then create policies and institutions that are required for the fulfilment of the right. Though this looks

³ In political philosophy these have been called negative and positive liberties. For details, see (Berlin, 1969).

simple, there is a fundamental difference between policy making in the normal course of things and policy making in the rights approach. This can be illustrated with a simple question: How many anganwadis should the government operate? Traditionally, it would have been left to the discretion of higher officials and politicians to decide how much to allot for the scheme and what kind of coverage to offer. This changed in November 2001 when Supreme Court of India directed that every child under six has the right to child care facility (Drèze & Jaishankar, 2005). This requires, among other things, that there should be an anganwadi within walking distance for every child. Using this as the basis, it was calculated that 14 lakh additional anganwadis will be required if all rural habitations should be covered. The moment childcare was made a right, it brought clarity to questions like how many centres should be opened, where, who is eligible, who can be denied services, etc⁴.

Typically every right is created for a specific set of people like child rights for children, civil rights for citizens, special religious or cultural rights for minorities, economic rights for people below poverty

⁴ (Saxena & Mander, 2006) provides details about the estimate and other issues relating to universalisation of ICDS.

line, right to pension for aged people, etc. Once we say that a certain set of people have the right to something, RBA demands that the society does everything in its command to ensure that the whole group is covered. For example, we cannot say that all aged people living below the poverty line have a right to state pensions and then allocate what we feel like in the budget. Ensuring that everyone of that group is covered is of fundamental importance to RBA⁵.

RIGHTS & DUTIES

Every right has to have a corresponding set of duty bearers⁶. For example, many communities Sub Saharan Africa had a right to send their children to live with relatives when famine strikes their region. Relatives had a corresponding duty to take care of these children. Such rights could be called *cultural rights* or rights that are clearly present in the culture of the region⁷. While such rights are impor-

⁵ (Chapter 3 of Citizens' Initiative for the Rights of Children Under Six, 2006; Drèze & Dey, 2006; Robinson, 2005; Roy & Drèze, 2005; Sec 1 of Saxena, 2004) provide a detailed overview of policy making in the rights approach.

⁶ For the relationship between rights and duties and other basic concepts relating to socio-economic rights see (Kent, 2005)

⁷ In (Drèze & Sen, 1989) Drèze and Sen present argue that all forms of entitlements should be understood in order to understand

tant, I will focus here only on rights that involve the state as the main duty-bearer. This is restrictive but it will help us focus on RBA and its impact on policy making.

EXPANSION OF RIGHTS

There has been a remarkable expansion of different kinds of rights and also the number of people covered by these rights over the last few centuries. Many of these have come as a result of famous struggles in different parts of the world. The French Revolution resulted in the Declaration of the Rights of Man in 1789 (see table 1 below) and is considered a major landmark for rights as we see them today. Other landmark events that have had widespread international influence include English Civil Wars of seventeenth century that extended political rights widely, women's movements internationally, independence movements around the world, civil rights movement of USA, anti-Apartheid movement of South Africa, among many others.

famines. This argument can be extended to other socio-economic rights as well.

TABLE 1: DECLARATION OF THE RIGHTS OF MAN - 1789⁸
Approved by the National Assembly of France, August 26, 1789

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:

Articles:

1. Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.
2. The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.
3. The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.
4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.
5. Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.
6. Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.
7. No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offense.

⁸ Source: http://avalon.law.yale.edu/18th_century/rightsof.asp

8. The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense.
9. As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law.
10. No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.
11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.
12. The security of the rights of man and of the citizen requires public military forces. These forces are, therefore, established for the good of all and not for the personal advantage of those to whom they shall be intrusted.
13. A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.
14. All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.
15. Society has the right to require of every public agent an account of his administration.
16. A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.
17. Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.

One of the major international landmarks in RBA is the Universal Declaration of Human Rights (UDHR) in 1948. UDHR was followed by a large number of international conventions on women, children, elimination of racial discrimination, economic social & cultural rights, rights of disabled persons, and other topics. These are rights intended to be available to all

people by the virtue of their being human beings, and hence are called *Human Rights*. Human rights have played a substantial role in shaping the framework of rights around the world and have been instrumental in expanding the range of rights and the people covered by them substantially.

TYPES OF RIGHTS

In an influential essay published in 1950s, T. H. Marshall (Marshall, 1964) argued that civil and political rights were the first set of rights to be extended widely. These were followed much later by social and economic rights. Civil rights including the right to own property, to marry a person of choice, to participate in the labour market and an assortment of other fundamental freedoms were greatly expanded in the Western context from the 16th century onwards. Simultaneously there was a struggle to remove the control of government and politics from the hands of a few and extended them widely. To enable greater participation new institutions were developed including representative bodies and elections. In most regions of the world including India only men owning property and belonging to certain races were allowed to vote initially. This was gradually extended through a long list of struggles to cover all races, gender and classes and today every citizen above a certain age limit is eligible to vote in most countries.

Participating in governance goes well beyond the right to vote. It requires protecting people's ability to form collectives, to express their opinion freely, to be informed about government's activities and

a wide variety of other measures to transfer effective control of politics to the common person. These struggles have resulted in rights to information, free speech, forming unions, among others. As Marshall argued civil and political rights developed earlier but not social and economic rights. Since nineteenth century there has also been a dramatic expansion of socio-economic rights. One of the earliest socio-economic rights to be extended widely was the right to education. Social security⁹ was expanded greatly in the United States starting in a large way in 1935. Programmes for health, school feeding and other measures were expanded greatly in Europe between the two World Wars and since then.

There is a common misconception in India that rich Western democracies are "market economies" with small governments. Contrary to this perception every rich democracy in the world provides substantial pensions, health coverage, unemployment support, free schooling, support for higher education, and other welfare measures (for a good overview see Wilensky, 2002). While the specific nature of

⁹ Social security includes a large number of benefits to every worker in USA. Certain amount of money is deducted from the salary of workers every month and workers are assured of support during retirement or in the event of disability during working years.

support differs across these countries, there is no doubt that these governments provides extensively for the welfare of their citizens. While socio-economic rights were being rapidly expanded in rich countries there was a consensus that poorer countries cannot afford these rights. Following this, even ardent advocates of rights based approaches argued that civil and political rights are inviolable but socio-economic rights should not be legalised and should be left to the discretion of governments. Since 1970s there has been a major change in this thinking.

Today, there is a much wider support among advocates of rights for socio-economic rights to get the same treatment like civil or political rights. In fact, it is argued today that political or civil rights cannot be effective unless they are accompanied by socio-economic rights. For example, the right to participate in governance will be ineffective if people are not educated or have a basic standard of income to afford the costs of participation. The close connection between different forms of rights is called *indivisibility of rights* in the rights literature. Thanks to these trends, the right to education, health, sanitation, housing and other socio-economic issues have become hot issues in recent years. Today when we hear

someone use the term “rights based approach” it normally refers to some socio-economic right. This does not mean that other rights are any less important; it only reflects the fact that we are now more used to thinking of other issues in a rights mode and thus they are taken for granted.

RBA IN INDIA

I now turn to rights based approach in the Indian context. Needless to say, some form of rights always exists in every context and they go by different names. For example, village residents in Tamil Nadu have duties and rights that go by the name *Kudi Maramat* that have existed for many centuries. There were forms of customary and cultural rights. In this paper I am focussing mainly on rights that are guaranteed by the state, and this form of rights could not have existed in an era of kings, and could have taken shape only under the formation of a modern nation state. That form of rights started in India with the British era.

Legislative councils were started for the first time in India in the 1860s (Markandan, 1964). This is important for two reasons: one, councils were the source of law, which is plays an important role in RBA and two, councils played an impor-

tant role in offering political representation. The road to political rights in India was long and tenuous. When the councils were started in 1861 there were no Indians in the councils. Over time the British government started nominating members of their choice, often wealthy princes who will not question their decisions. In 1892 a small proportion of the council members were elected and this was expanded dramatically in 1920. But even in 1920 only men paying property tax or having graduate education could vote. This started expanding over the next thirty years with constant struggles till we got universal adult franchise with the Indian Constitution.

Along with the struggle to get more representation there was simultaneously a struggle to get more powers for the representatives. For example in 1892 a bill was passed giving council members permission to discuss the finance bill without the power to alter it. The same bill also allowed the members to “politely” ask for information on any act of the administration in the province (Markandan, 1964). This power to ask for information on any matter of public interest for the first time made the administration answerable (but not yet accountable) to the council.

Between 1920-47, a series of measures were taken to expand the civil rights of marginalized groups – especially of Dalits in different provinces. These laws sought to remove civil disabilities that Dalits and others have in accessing public spaces and to expand opportunities available to all.

The most important moment in the Indian context as far as rights go is the Indian Constitution that came into force in 1950. Since the Constitution was founded after a period of extended struggle by nationalist, Dalit and other movements, there was a wide support among framers of Indian constitution to radically extend all kinds of rights to people. The fact that the chairman of the drafting commission was Dr. B R Ambedkar had tremendous implications for shaping the Constitution. Being a Dalit, Ambedkar was acutely conscious that rights could be circumscribed to certain communities and was conscious of the need to extend it to everyone. Being a sharp political and social thinker he reflected on what kind of provisions would be required to make such rights a reality to people who have been historically marginalised.

He argued that under conditions of sharp social inequalities it will be impossible to achieve equality in politics (Ambedkar &

Rodrigues, 2004). Thus right from the beginning framers of the Constitution were conscious that apart from creating a set of institutions that treat everybody equally, there should also be an active effort at creating social equality. This led to reservation of jobs for SCs and STs and other provisions of affirmative action. In my opinion framing of the Indian Constitution is at least as important as the French Revolution as far as the history of rights based approach is concerned.

Even such a farsighted Constitution argued based on international trends in 1950s that socio-economic rights are highly desirable but may not be feasible immediately and so they did something unusual. Following the example of the Irish Constitution they adopted a set of *directive principles* (see table 2). They hoped that the directive principles will provide a guideline for governance but no citizen can approach a court¹⁰ arguing that the state has failed to provide education or anything else that are part of the directive principles. Thus, some rights

¹⁰ Article 37 in Part IV of the Constitution says, "The provisions contained in this Part [containing directive principles] shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".

became mandatory and inviolable offering the state no excuse to not implement them whereas others became optional. It thus became possible to have lofty statements about socio-economic rights in our policies without providing adequate budgets or institutional arrangements to ensure that everybody has access to these rights.

Following the Constitution many institutions were put in place to ensure civil and political rights widely for people. India has had a fairly exceptional performance as far as political rights are concerned, especially in democratic governance. When it comes to extension of education, providing reasonable health care, and other socio-economic rights - India's performance is poor in comparison with most other countries at the same level of economic development.

By the turn of the century India's performance in tackling infant mortality, maternal mortality, undernutrition, chronic hunger and other aspects fundamental to human well being were among the worst in the world¹¹. Following this persistently poor performance there has been a strong

¹¹ For further information on these see (Citizens' Initiative for the Rights of Children Under Six, 2006; Drèze & Sen, 2002; UNDP & Jolly, 2000).

resurgence in movements for socio-economic rights in the last decade and a half. Today, there is a strong body of advocates and social movements.

COURTS & RIGHTS IN INDIA

These social moments have found an ally in an unexpected quarter - the Supreme Court of India. In 1993 the Supreme Court delivered a landmark judgement in *Unnikrishnan Vs. Government of Andhra Pradesh*. The court argued in this case that the government cannot postpone forever the implementation of directive principles. The directive principles were not made justiciable only because the government did not have the resources as soon as the constitution was adopted in 1949, but the same excuse cannot be used indefinitely.

In the judgement the Supreme Court read the directive principles along with Article 21 on the fundamental right to life. Fundamental Rights are justiciable and inviolable and using this, the court argued that the state has a legal duty to provide education. This approach of using article 21 has been followed by the Supreme Court and many High Courts in India in other

litigations including the right to food litigation¹².

Starting in a small way in the 1980s the Supreme Court of India has been highly assertive in taking up issues of people's rights through Public Interest Litigations (PILs) and has many notable judgements on issues like environment, education, displacement, food, employment, etc. and of course, the court has also played an important role in protecting people's civil and political rights.

RIGHTS BASED SCHEMES IN STATES

To their credit, the parliament and assemblies have also taken up some programmes in the right mode. The earliest precursor is Maharashtra's innovative Employment Guarantee Scheme that guaranteed unskilled manual employment upon demand to any of its rural residents. This is perhaps one of the most ambitious rights based schemes based on a legal guarantee legislated in any state¹³. While this was done in the 1970s, many years later in 1990s, it was followed by the Education Guarantee Scheme of

¹² For more details on the litigation see www.righttofoodindia.org www.sccommissioners.org

¹³ For more details about the scheme see (Echeverri-Gent, 1988; Echeverri-Gent, 1993; Mahendra Dev & Ranade, 2001; Ravallion, 1991).

Madhya Pradesh¹⁴. This scheme guaranteed that any habitation without school facilities will be provided with a school within a month of demand by the inhabitants. This scheme has been criticised rightly for extending ill-equipped schools. While there is some merit to that argument, there is no doubt that EGS increased schooling significantly in Madhya Pradesh.

It should be remembered that legal rights are neither necessary nor sufficient to extend socio-economic rights to everybody. For example, legal rights are not necessary to extend education, water, sanitation, housing and all kinds of public services in practically a rights mode. States such as Kerala, Tamil Nadu and recently Himachal Pradesh have extended schooling facilities without particularly legislating a legal right that enable people to approach courts. Similarly Kerala's health programmes and Tamil Nadu's nutrition programmes have been carefully designed to reach everybody. So, when MGR extended school feeding to all children going to government schools in 1982, it was not because he had a legal obligation to do so but because there was a political commitment to eradicate classroom hunger

¹⁴ For a review of education guarantee scheme see (Leclercq, 2003).

among all children. A lot could be done by governments if there is a political commitment without the need to create specific laws or institutions to ensure these rights and some states have extended some programmes practically on a rights mode. Illustrious examples include Kerala, Tamil Nadu and in certain cases Gujarat¹⁵ and Himachal Pradesh.

RIGHTS BASED SCHEMES NATIONALLY

When it comes to socio-economic rights the central government did not have a direct role to play according to the constitution. Health, education, rural roads and most other subjects were mainly the preserve of the state governments. But due to a variety of reasons, including the fact that state government finances were not increasing rapidly, GoI has been playing an increasingly active role in many socio-economic issues.

In the centre, following Unnikrishnan Judgement there was pressure on the Indian government and to amend the Indian Constitution and make it a fundamental right in the Constitution itself. An amendment was introduced in 1997 but it was not passed for many years. But following an extensive campaign by civil so-

¹⁵ Gujarat has had a wide ranging school feeding programme from the 1980s onwards.

ciety groups across the country the amendment was finally passed and the right to education has been made justiciable. Along with this, childcare was introduced explicitly for the first time as a directive principle. The amendment was followed by Right to Education Bill, 2005 and together these have given a huge thrust to universalise schooling in India today. This is reflected among other things in the rapid expansion of schooling infrastructure in many states that were lagging behind in providing education.

Recognizing that corruption plays a major role in the delivery of public services the Right to Information Act, 2005 was passed by the parliament. This was followed by the ambitious National Rural Employment Guarantee Act (NREGA) inspired by the Maharashtra Employment Guarantee Scheme. While the number of schemes based on legal guarantees is only a handful, there is huge thrust today to think about issues in the rights mode. This is true both of people's moments as well as the government.

An impressive array of campaigns have come up today that examine current policies critically and develop alternative ideas in the rights mode. These campaigns cover a wide array of subjects in-

cluding land, housing, education, nutrition, health, childcare, livelihood, care for the aged, and other issues that are fundamental to people's well being. The alternate ideas that they bring forward may have a large impact on policy making in India in the years to come.

2. RIGHTS BASED APPROACH AND HUMAN DEVELOPMENT

MAKING DEVELOPMENT HAPPEN

Economists have criticised rights based approach by arguing that creating rights will make the situation worse, though it is based on good intentions. A dominant thinking in economics today is that the most important objective for a society should be economic growth. Growth happens best if resources of the country are managed in the private sector in a free market system. Creating rights will take money away from the private sector and put it in the hands of the government, which will waste society's resources – and thus reduce the overall economic growth¹⁶. They argue that economic growth is the best way of eradicating

¹⁶ This is of course a gross simplification of the argument. For greater details, please consult (Kanbur, 2007)

hunger, providing good health and all the other things that one seeks to achieve by creating socio-economic rights. Since creating rights and a big government through these rights will reduce economic growth it will only lead to poor human well-being. This is the paradoxical consequence of creating rights.

Mainstream economists have supported certain forms of rights including property rights and some degree of political rights, but have been opposed to most socio-economic rights. There are two main reasons for this: one, mainstream economists look at overall economic growth as the only indicator of development and often ignore the finer details of what economic growth means in reality for people. Two, they look at investment as the ultimate driver of economic growth and so would discourage anything that will come in the way of creating more investments. Seen from this logic, creating socio-economic rights is ultimately bad for the society. Human development approach differs from more traditional, growth-focussed approaches to development by understanding development in a much broader sense than just economic growth, and it also focuses on human agency as the main driver of development rather than investment.

HDA recognises that people are thoughtful, inventive and motivated and the best way of achieving development is to enable people to achieve what they desire. But people's agency is limited by the context of their lives. A hungry child will find it difficult to concentrate in school. Someone who is constantly falling sick will find it difficult to be productive. Disabled people will find it difficult get employment since it is difficult to reach their workplace even if they are highly skilled in doing the job. Social restrictions on women have prevented them from taking up gainful employment, even if they are capable and wish to take one up. These are some examples of how the context of our lives limits our ability to pursue our well-being. The fundamental lesson of HDA is that if poor health, illiteracy and other things make it difficult for people to achieve their potential, society can create facilities to help people overcome these problems. By doing so we will help people pursue their potential, and that is the best way of achieving development. It is thus people centred rather than investment centred¹⁷.

I mentioned that HDA does not look at development as just economic growth. In

¹⁷ This does not mean that investments do not matter; they do. But HDA recognizes that there is more to development than investments.

a recent Tamil movie the villain claims that he wants to get rich since he loves the smell of currency. Most of us want money not for the smell of it or for merely having it, but because money helps us to do various things like travel, buy food, be clothed, have a house, become educated, healthy, respected, etc. Economists like Amartya Sen argue that instead of focusing on how much income is generated overall, we should focus on what it helps people to achieve (Sen, 2000)¹⁸. Economic growth tells us only about how much income is available overall in the country and this is of limited value. If we want to know about the actual state of development, we should look at whether people are able to pursue the things they wish to do. Of course, it is impossible to find out all the things that people get to do with money. Instead, we can prioritise certain things as substantially important for people's lives.

You would have noticed that there are two different ways in which I have talked about good substantive freedoms in the last two paragraphs. On one hand, I talked about these as 'good things' that most people would seek to have in their

¹⁸ While (Sen, 2000) provides a detailed conceptual introduction, (Drèze & Sen, 1997; Drèze & Sen, 2002) elaborate this in the Indian context.

lives. On the other, I talked about them as things that will help people to make use of opportunities and reach their potential. Thus providing security, health, housing and other services is good not just for their own sake, but are also ways of promoting development. HDA thus offers a radically different vision of what consequences rights based approach will have on development. In keeping with this, there is a large body of evidence that regions that have invested on its people by providing good public health, education and other services have developed remarkably.

This alternate vision of how development happens makes rights based approach more attractive and feasible. This is one important reason why rights activists should pay attention to HDA. That apart there are many synergies between the two approaches. I will take up some of them in the following sections.

CHOOSING SUBSTANTIVE FREEDOMS

One of the most important tasks in the rights based approach is to debate, identify, and come to a widespread agreement on what constitutes an essential set of things for human well-being. There will of course be differences of opinion about

what is essential for a good life; such differences and debates about them are an inherent part of rights based approach. Selecting priorities is one of the major challenges in HDA as well since it evaluates development by looking at how far people are able to achieve things that are fundamental to our well-being. In doing this, rights based approach can be of great assistance to HDA.

Rights are often created through democratic processes since the demand for rights happens through a process of public discussion and rights are legalised through legitimate processes. In this process, social movements, media, polity and other democratic institutions play an important role. Rights offer us political consensus over things that were debated at length, and by this virtue they are significant for the human development approach. HDA will be greatly enriched if it moulds its priorities by looking at rights embedded in constitutions, laws, human rights treaties, and other rights that have been created on the basis of widespread discussion.

Needless to say, not every right is created on the basis of democratic consent and it is not unusual to have laws that are contrary to widespread public opinion. Thus,

basing human development indicators solely on the basis of legal rights can be misleading. While there is a reason to be cautious, the body of rights found in various documents still offer us the best guide to what must be priorities in our society in the contemporary world.

HUMAN DIVERSITY

One of the major advantages of HDA and RBA over other approaches to development is the attention they pay to human diversity. There is a wide diversity among people and we often have different needs. Men/women, able bodied/disabled people, children/aged, all have different needs and preferences. Paying attention to these differences is crucial to their well being, and for their ability to participate actively in society¹⁹. HDA and RBA are better able to take these diversities into account in conceiving development. Let me illustrate this with an example.

The need to move around is fundamental for us to be able to do most activities. This can be highly restricted to disabled people for physical reasons and to women for social reasons. It is possible for dis-

¹⁹ (Agarwal, 2003; Nussbaum, 2003) and other articles in the same issue of Feminist Economics discusses extensively on why this approach is particularly suited to account for gender differences. These arguments can be extended to other forms of differences as well.

abled people to have high degree of mobility if we design our cities and our buildings with their mobility in mind. Similarly, creating women-only compartments in trains and other arrangements can enable greater mobility of women. Both HDA and RBA recognise that freedom of mobility requires different arrangements by accounting for human diversity, but have very different strengths in this matter.

POLICIES & INSTITUTIONS

The human development community has created a large set of statistical tools that can be used to assessing how different people are able to achieve various substantive freedoms. For example, knowing that boys and girls have different levels of schooling has helped build public consciousness about taking a range of measures to make schools socially accessible to girl children. Similarly women and men have different nutritional needs. Knowing something like most pregnant women in India suffer from anaemia can help us focus on the problem. A lot of useful information is available in Human Development Reports and other documents that can help in raising public consciousness, and to help planners to think of strategies, budgets and other issues that are important for policy making.

If rights-based approach has to materialise into anything concrete, we require a large degree of planning of different kinds of services. In order to do so, it is essential to have concrete information about the status of fulfilment of various rights and what measures could be taken to fulfil them. It is possible that we spend a lot of money, time and effort in creating mechanisms to fulfil certain rights. Our outcomes can be improved by constantly monitoring the steps we are taking and the outcome that they generate. Many tools have been developed by activists of human development community to tackle these needs.

Rights approach will be enriched if it can use the tools developed in HDA for assessment and planning. For example if somebody is interested in the right to nutrition, we can assess the extent of malnutrition in different regions of India in order to decide where and how we should intervene. This challenge requires detailed information about the status of malnutrition in the country, what causes malnutrition, what could be done to tackle it, and other information. Such information can be found in a wide array of surveys that have been done by people engaged in human development. Human Development Reports themselves have a

lot of information and these can be supplemented with other information or fresh surveys. These can then play an important part in our planning exercises.

Given its focus on law and politics, the rights community has not concentrated as much on statistical tools. Instead RBA has an impressive array of political and institutional tools that can help in creating suitable conditions for human development. Take for example disability laws in various countries. These laws take into account the different needs of disabled people and prescribe codes for buildings, public transport, city planning, etc. that can provide mobility to disabled people. RBA has an unmatched ability in creating social arrangements so that any important freedom is available to all kinds of people. This is an ability that the human development approach does not have. This possibility offered by RBA opens up large range of policy options that can help HDA go well beyond its focus on delivery of social services and imagine alternate ways of ensuring various freedoms.

It is a great challenge to create policies and institutions to ensure that desirable freedoms materialise in reality. In doing so a lot of collaboration is desirable between the rights community and the hu-

man development community. The human rights community offers a certain kind of tools: typically legal and political tools that can build the momentum in the administration to create certain social arrangements. The human development community is slightly better suited with an array of tools to offer policy suggestions so that we can have the most efficient ways of fulfilling rights.

It could be said generally that HDA is strong in tools of assessment, planning and has a strong philosophy of how development happens. RBA on the other hand is more focussed on institutions and politics, and seeks to influence policy making through these. They both have different strengths and tools for development and have the potential to collaborate.

ACCOUNTABILITY

Building accountability is one of the cornerstones of RBA. There are some who argue that building accountability is the most important task that RBA could achieve, and thus focus on creating legal accountability for each right. Others look at accountability in a much wider framework and thus give a prominent role to civil society, media and other institutions. I will take some of these ideas up below.

LEGAL ACCOUNTABILITY

One popular model of legal accountability says that for every right there should be corresponding duty-bearers and there should also be a neutral arbitrator who can ensure that the duty-bearer does the duty allotted to the agency (Kent, 2005). In this system courts and other judicial bodies play an important role since they can be approached by holders of rights if their rights are not being met. For example today we have a provision that the state and the central governments in India are legally responsible to provide school feeding to all children in government and government assisted primary schools as a matter of right. Under this framework, if the state does not provide school feeding for any child in a government school, it is possible for the parents or any public spirited citizen to approach the courts for a remedy.

When a right can be protected by the court, it is called *justiciable*. Around the world most socio-economic rights are not justiciable. This is partly because there are no clear laws defining the duties of the government. For example, even in countries like Brazil or South Africa where the constitution clearly talks of people's right to food or housing there are no laws on what the government should

do to fulfil these rights. It would be infeasible to argue that the state should feed everyone or providing housing to everyone. Many important rights have suffered since the *content* of the rights have not been clearly specified²⁰. When that happens, courts find it difficult to take a clear stand on how the state should respond to these issues. This is illustrated in the famous *Grootboom Judgement* of South Africa where the court took a strong stand in arguing that the state should ensure reasonable housing to people, but did not proceed to clarify what the state should do concretely towards this end.

There is a legitimate concern that laws are routinely violated in India and so legislation of rights is meaningless. While this is a legitimate concern, we should understand law not merely from the perspective of how far it is implemented. We should also pay attention to how laws are used by people to further their interests and if it is used by poorer and marginalised people to expand their substantive freedoms. It may happen often that laws have an impact in the right direction even when they continue to be violated in a large-scale. But in any case, the legal

²⁰ For a discussion on the difficulty of defining the content of rights and its implications, see (Huchzermeyer, 2003; Vivek & Guha-Khasnobis, 2007).

framework has to be complemented by other means to protect people's rights. This depends on the vibrancy of civil society and people's movements as well as specialised commissions that have been created for this purpose. I take them up below.

COMMISSIONS

It is not always possible or feasible for people whose rights are being violated to approach the courts. In order to enable the fulfilment of rights, many commissions have been created that address different constituents or issues. For example, we have the National Human Rights Commission, Women's commission, National Commission for the Scheduled Castes and Scheduled Tribes, Information Commission, and many others. These commissions also act as important agents of accountability and they can take slightly more proactive measures than the judiciary and have a greater leeway in asking the government to implement policies or practices in order to fulfil or protect certain rights. Some countries like South Africa also give a mandate to their commissions to periodically assess how far the government is taking measures to fulfil various rights.

By and large these commissions in India have traditionally focussed on civil and political rights, though they have been more interested in taking up socio-economic issues over the last few years.

CIVIL SOCIETY & MEDIA

Merely having a legal right is no guarantee that the rights will be met. Ultimately social and political will play a fundamental role in transforming rights into reality, but in doing that concrete rights can play an important role. Laws and institutional mechanisms are important since they give people who are fighting for the rights something to fight with (Drèze, 2004). For example people who are seeking wage-employment will find it easier to bargain with politicians and officials when they have a right to work through programmes like NREGA. From the perspective of officials as well, it is easier for them to respond to demands for work if there is an existing institutional framework that allows field-officials to respond with ease without worrying about budgets and other issues.

The rights approach also provides a sound critical framework for evaluating policies. In a large country like India it is possible for the government to create the largest schemes in the world without reaching

large sections of the population. For example, we have had the largest public childcare system in the world despite the fact that it reaches less than one fourth of children under six. Approaching such issues from the perspective of rights and human development puts a relentless focus on ensuring that everyone is able to enjoy all the substantive freedoms. They create a commitment to create policies and schemes in such a way that they reach everybody. This to me is a fundamental difference between having schemes and rights. The language of rights is also great way of political mobilisation that helps create public demand on specific issues, and thus plays an important democratic role. Human rights and other treaties may not embody specific steps to force government to fulfil rights. But they bring certain issues into the agenda that are fundamental to people's well-being and thus help create a political will which can be more important than creating concrete laws and institutions.

While formally appointed commissions such as the human rights or the women's commission play an important role in securing people's rights, the most important factor that can make or break how far rights are being implemented is people's

movements. The role of civil society cannot be underemphasised as an agent of accountability. Without doubt civil society can function and can take steps even without concrete laws. But having concrete laws can increase the bargaining power of civil society groups and also guide officials in order to determine which claims of people's movements must be taken more seriously.

Apart from the role of people's movements, media plays an extremely important role in the fulfilment of people's rights. Many studies have shown that where the media is active, governments tend to act more responsibly with respect to people's rights. The most dramatic illustration of this is the role of media and the civil society in addressing large famines in India. India has a long record of massive famines and the last happened in 1942 (Drèze & Sen, 1989). Since then we have never had a major famine, and this is attributed to the fact that democratic governments are sensitive to criticism and they tend to react quickly when media and people's organisations start highlighting it.

3. CONCLUSION

The human development approach and human rights approach has a lot of simi-

larities in their basic philosophy. Both these approaches have a common concern against the exclusive focus on growth of national income as the sole focus of development, and recognize that people's access to water, education, health and other basic amenities cannot be ignored in any scheme of development. At its core, both of them focus on fundamental human freedoms and as the means of development and also the goal of development and in this they are radically different from other approaches to development. HDA can help position RBA as a sound framework of development in a context where the dominant market-oriented approaches approach rights bad since they restrict the market and thus are 'inefficient'. HDA with its focus on human agency see these laws as something that enables a large numbers of people to do things that all of us consider essential, and thus rights are crucial to development.

Despite a similar philosophical base, they were both developed in distinctly different communities and so they have different strengths and weaknesses in practice. One of the major strengths of the human development approach is that it has a lot of statistical techniques that have been developed by economists involved with the approach over many years. The rights approach always had a legal-political leaning and so it did not have the same kind of statistical tools for planning and for assessment. Rights based approach can be enriched by the rich information that HDA can provide with its vast array of reports and statistical tools. HDA can in turn be enriched by the legal and political tools of RBA so that the issues that HDA raises can materialise effectively. This paper has highlighted some such possibilities.

Table 2: Directive Principles of state policy²¹

37. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

38. (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

²¹ From the Constitution of India as modified up to December 1, 2007 including amendments to the Constitution till that date. Source: <http://lawmin.nic.in/coi/coiason29july08.pdf>. The articles under square brackets are pending modification

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

39A. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

40. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

42. The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

43A. The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

44. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

45. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years²².

46. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

49. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. The State shall endeavour to—

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and

(d) encourage settlement of international disputes by arbitration.

²² This was substituted by the 86th Amendment to read, "Provision for early childhood care and education to children below the age of six years: The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years"

REFERENCES

- Agarwal, B. (2003). Amartya sen. *Feminist Economics*, 9(2), 1.
- Alston, P., & Robinson, M. (2005). *Human rights and development : Towards mutual reinforcement*. Oxford ; New York: Oxford University Press.
- Ambedkar, B. R., & Rodrigues, V. (2004). *The essential writings of B.R. ambedkar*. New Delhi ; Oxford: Oxford University Press.
- Berlin, I. (1969). Two concepts on liberty. *Four essays on liberty* (). London, New York etc.: Oxford U.P.
- Citizens' Initiative for the Rights of Children Under Six. (2006). *Focus on children under six* (Abridged report. Delhi: Circus.
- Drèze, J. (2004). Democracy and the right to food. *Economic and Political Weekly*, , 1723.
- Drèze, J., & Dey, N. (2006). *NREGA: A primer*. New Delhi: Right to Food Campaign.
- Drèze, J., & Jaishankar, Y. (2005). *Supreme court orders on the right to food: A tool for action*. New Delhi: Right to Food Campaign.
- Drèze, J., & Sen, A. (1989). *Hunger and public action*. Oxford: OUP.
- Drèze, J., & Sen, A. (1997). *India economic development and social opportunity*. Delhi: OUP.
- Drèze, J., & Sen, A. (2002). *India : Development and participation* [India : economic development and social opportunity] (2nd ed.). New Delhi: Oxford University Press.

- Echeverri-Gent, J. (1988). Guaranteed employment in an indian state: The maharashtra experience. *Asian Survey*, 28(12), 1294-1310.
- Echeverri-Gent, J. (1993). *The state and the poor: Public policy and political development in india and the united states*. Berkeley and Oxford: University of California Press.
- Huchzermeyer, M. (2003). Housing rights in south africa: Invasions, evictions, the media, and the courts in the cases of grootboom, alexandra, and bredell. *Urban Forum*, 14(1), 80-107.
- Kanbur, R. (2007). *Attacking poverty: What is the value added of a human rights approach?* Unpublished manuscript.
- Kent, G. (2005). *Freedom from want : The human right to adequate food*. Washington, D.C.: Georgetown University Press.
- Leclercq, F. (2003). Education guarantee scheme and primary schooling in madhya pradesh. *Economic and Political Weekly*, 38(19), 1855-1869.
- Mahendra Dev, S., & Ranade, A. K. (2001). Employment guarantee scheme and employment security. ()
- Markandan, K. C. (1964). *Madras legislative council: Its constitution and working between 1861 and 1909; being a report, submitted to the madras university, as a fellow in the politics department between october 1952 and october 1953*. Delhi: S. Chand.
- Marshall, T. H. (1964). Citizenship and social class. *Class, citizenship and social development* ()

- Nussbaum, M. (2003). Capabilities as fundamental entitlements: Sen and social justice. *Feminist Economics*, 9(2), 33-59.
- Ravallion, M. (1991). Employment guarantee schemes: Are they a good idea? *Indian Economic Journal*, 39(2), 50-65.
- Robinson, M. (2005). What rights can add to good development practice. *Human rights and development : Towards mutual reinforcement* (Alston, Philip; Robinson, Mary ed., pp. 551). Oxford ; New York: Oxford University Press.
- National Rural Employment Guarantee Act: Twelve Essential Safeguards, (2005).
- Saxena, N. C. (2004). *Fifth report of the commissioner* No. 5). New Delhi:
- Saxena, N. C., & Mander, H. (2006). *Update on the universalization of ICDS: Clarifications and recommendations*
- Sen, A. (2000). *Development as freedom* (1st. ed.). New York: Knopf.
- UNDP, & Jolly, R. (2000). *Human development report 2000*. New York: OUP.
- Vivek, S., & Guha-Khasnobis, B. (2007). Rights based approach to development: Lessons from the right to food movement. In B. Guha-Khasnobis, S. Acharya & B. Davies (Eds.), *Food insecurity, vulnerability and human rights failure* (). Basingstoke: UK: Palgrave-Macmillan.
- Wilensky, H. L. (2002). *Rich democracies : Political economy, public policy, and performance*. Berkeley: University of California Press.