

# A HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT IN INDIA



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# A HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT IN INDIA

Edited by Moshe Hirsch, Ashok Kotwal,  
and Bharat Ramaswami



**UBC**Press · Vancouver · Toronto

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# Introduction

## India and a Human Rights Based Approach to Economic Development

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MOSHE HIRSCH, ASHOK KOTWAL,  
and BHARAT RAMASWAMI

Over the last couple of decades, India has adopted a unique approach to economic development. It has passed parliamentary acts making some crucial desirable developmental outcomes, such as food security, primary education, and even employment, into “legal rights” conferred on every citizen. This approach can run into two problems, however. First, enacting laws is one thing but implementing them in practice through a highly imperfect institutional structure is another. If what is promised as a legal right is not delivered, it damages the government’s credibility. Second, the domestic policies required to deliver on the promises implicit in legislating rights to development may run counter to the letter or the spirit of India’s international treaty obligations under the World Trade Organization (WTO) or the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS).

The chapters in this volume attempt to shed light on both these issues. They ask to what extent it is possible, or whether it is possible at all, to bring about development by making it a legal right. They also probe whether there is a genuine clash between India’s right to develop and India’s commitment to international agreements.

“Development” is an all-encompassing term. The aspects of development that we tackle in this book are those that we regard as most pertinent to

a poor country like India: food security, malnutrition, primary education, rural employment, the impact of multinational corporations on domestic labour markets, and two environmental issues: technology policy (on biotechnology) and climate change. Each of these seven chapters is written by an expert on the topic at hand. First, however, in order to understand why “rights-based development” was adopted in India, it is necessary to review the course of Indian development.

### **The Course of Indian Development: A Brief History**

India has experienced impressive economic growth since the early 1990s, and its path to economic development demonstrates some prominent features of the human rights based approach to economic development.

India began its turnaround in economic performance in the 1980s. The pace of economic growth was sustained and then boosted by a series of economic policy reforms beginning in 1991 that opened up the economy to international trade and foreign investment. Domestic reforms deregulated industry; removed restrictions on the entry of the private sector in banking, insurance, aviation, and other sectors; rationalized the tax structure; and facilitated a competitive financial sector. Indian economic policy continues to emphasize measures that enable foreign and domestic investments in all areas, particularly in the infrastructure areas of transport, energy, and communications.

From 1951 to 1981, the Indian growth rate averaged 3.7 percent per annum. In the subsequent thirty-two years up to 2012, the growth rate averaged 6.2 percent. In the first period, India’s GDP growth exceeded 6 percent in only nine years; in the subsequent period, however, it occurred on seventeen occasions. In 2014–15 and 2015–16, when the world economy struggled to grow at rates between 3 percent and 3.5 percent, the Indian economy grew at over 7 percent.

The impressive growth performance has been accompanied by a decline in poverty but the relationship has been variable and inconsistent.<sup>1</sup> The proportion of the population living in poverty (by official definitions) did not change significantly between the early 1950s and 1973–74. In the subsequent fourteen years up to 1987–88, it fell by a third, after which the rate of decline slowed till 2004–05. Poverty went down sharply in the period 2004–05 to 2011–12. According to the currently accepted definition of the

poverty line, the poor in India comprise 22 percent of the population (26 percent in rural and 14 percent in urban India).

In absolute numbers, the poor number 270 million. At the \$1.90 per day poverty line, India accounts for about one-quarter of the world's poor. For India to achieve near-elimination of poverty by 2030 (in line with the aspiration of the Sustainable Development Goals of the United Nations), not only must India continue to grow but incomes at the bottom end also have to rise consistently. The latter constitutes a particular challenge for India since, as mentioned earlier, periods of growth have not always translated into rapid progress on poverty. Even when poverty fell rapidly in the period between 2004 and 2012, the elasticity of poverty to growth was only  $-0.9$ . Compared with other developing countries, India's poverty elasticity is well below the median and toward the bottom third (Narayan and Murugai 2016). Its failure to achieve inclusive growth has been attributed to two failures in its development strategy (Kotwal, Ramaswami, and Wadhwa 2011).

First, India has not been able to create enough productive jobs for much of its low-skilled population (in labour-intensive sectors such as textiles) and thereby facilitate a swift transformation of the economy. Second, India has failed to rapidly upgrade the human capital of its labour force to sustain the expansion of the economy into high-skill-based activities, especially in services.

The discordance between growth and poverty is evident in the relatively slow progress in social indicators. In the twenty years from 1994 to 2014, both infant and under-five mortality rates have decreased drastically, but their levels (39 and 50 percent, respectively) are still higher than those of other poor nations in the neighbourhood, namely, Bangladesh and Sri Lanka. One important proximate cause is that access to improved sanitation and to piped water at home have not improved much and still remain limited to less than half of the population. In 2004–05, as many as 44 percent of under-five children were underweight and 48 percent were stunted. More recent figures indicate that these numbers have moderated to 29 percent and 39 percent, respectively. Nonetheless, international comparisons show that India's progress in these health indicators are much worse than might be expected from its income levels.

India also carries a significant burden of low educational attainment. Only about a third of the population have secondary education or greater.

Nearly one-third of adults are illiterate, while the remaining third has primary or middle-school education. Despite steady improvement, the number of poorly educated people has been so large that the progress has been slow. At the primary level, there are over 95 percent of children in school, but the major problems are middle-school dropouts and the poor quality of schooling.

Research has shown that the public health and educational institutions have failed to cope with the pressures placed on them. The tertiary care segment of the government health system suffers from underinvestment and poor quality. Furthermore, while investment in the government school system has grown substantially, its quality (measured in learning outcomes) has not improved. The private sector has expanded to partly fill these gaps but access to quality remains a concern. A raft of institutional problems that result in a lack of accountability of service providers to users plagues the public health and educational systems (Muralidharan 2013; Das et al. 2014). This means that India's slower-than-expected reduction in poverty is not the only reason for the failure of social indicators to improve rapidly.

These problems are thorny enough to cause activists to promote a legislative approach to imposing accountability on government institutions. In the 2000s, such approaches found favour with the courts as well as the political leadership, which was aware that rising incomes leading to greater aspirations were both a threat and an opportunity. In light of this institutional weakness, India has undertaken a rights-based approach to economic development, which creates legal rights to vital services such as education, food, and employment through parliamentary legislation. This policy constitutes an exemplary case of the "right to development" widely known in international law literature and aims to compel government bureaucracies to be legally accountable to individuals under their jurisdiction. Though various states and international institutions have adopted a rights-based approach to development, India's exceptional policies in this sphere represent a model for other states.

The right to development is a broad normative concept that seeks to hold states and international institutions accountable in particular instances. Philosophically, the rights approach is rooted in the right to human dignity, which in turn implies a right to basic human necessities. As these necessities need economic resources, the right to development implies a

redistribution of resources. While a fiscal tax-subsidy framework for redistribution quickly draws opposition, a rights-based approach often has the potential to be backed by a broader political alliance. However, institutions such as an activist civil society, an independent judiciary, and a free press are needed for this approach to succeed in compelling governments to change.

This book reviews, probes, and analyzes India's experience with the human rights approach. By changing the legal environment, a rights approach could also significantly affect markets and compliance with trade agreements. A principal focus of this book is to understand the conflict, if any, between markets/trade and specific rights to development such as food, education, and health. The book also advances the state of policy by suggesting effective ways of designing and implementing the rights to development that minimize conflict with trade and market policies.

### **The Right to Development**

The right to development<sup>2</sup> was officially proclaimed in 1986 by the UN General Assembly as the *Declaration on the Right to Development*<sup>3</sup> and was later included in a series of international declarations.<sup>4</sup> The right does not constitute a legally binding rule under international law and is instead an influential normative concept affecting the behaviour of states and international institutions ("soft law"). Unlike many other human rights, the right to development presents certain unique features (discussed below) and reflects a distinctive humanistic approach to economic development. Some of the principal characteristics of the right are: human-centred development; a right realization process requiring the implementation of a wide range of specific and interdependent human rights; a participatory, non-discriminatory, accountable, and transparent right implementation process; and the involvement of considerations of social justice, including fair distribution of benefits and burdens (OHCHR 2010, 6).

Though the general right to development includes both individual and collective specific rights (including those of states), the predominant component in contemporary literature and practice relates to the individual person as the central subject of development.<sup>5</sup> The rise of developing countries as a significant political bloc and the formulation of the New International Economic Order (NIEO) constituted the historical background to

the early stages of the evolution of the right to development<sup>6</sup> (with the 1986 *Declaration* bearing some traces of the NIEO concept).<sup>7</sup> Some Third World countries argued during this period that past exploitative practices justified the imposition of direct obligations on developed countries toward poor ones. Notwithstanding such arguments regarding the collective rights of underdeveloped countries (“the right to development assistance”) and ensuing duties of rich countries, and some references to several rights of states and peoples in the 1986 *Declaration*,<sup>8</sup> the widespread conception of the current right emphasizes the human person, the suffering of poor individuals, and their right to human dignity with minimum necessities of life, including access to basic resources.<sup>9</sup> Individuals who are deprived of such basic needs live in both developed and developing countries, but much more so in developing ones.

The realization of the right to development may be impeded by a breach of a broad range of human rights,<sup>10</sup> including political rights such as those relating to transparent and accountable governance and democracy.<sup>11</sup> However, it also tends to emphasize the importance of social and economic rights, such as the right to food, education, health, water, clean environment, housing, and work.<sup>12</sup> The holistic concept underpinning the right to development<sup>13</sup> also refers to the interrelationship between numerous specific human rights involved in the promotion of human development. Unlike the common hierarchy involving categories of human rights (such as peremptory and fundamental rights), the relevant instruments emphasize that the specific human rights included in the broad concept of the right to development are indivisible, interdependent, and mutually reinforcing.<sup>14</sup> Thus, from this perspective, these particular rights are profoundly interconnected and their implementation promotes human development.

The duties emanating from the right to development are attributed to both national governments and international institutions.<sup>15</sup> The governments of countries suffering from a lack of adequate development are required to undertake the necessary measures at the national level for realizing the right to development,<sup>16</sup> while developed countries as well as international institutions are required to adopt complementary measures to promote development in the former countries.<sup>17</sup> Though the implementation of the right to development involves joint and complementary commitments, national authorities bear the primary responsibility for creating conditions favourable to the realization of the right to development.<sup>18</sup> This joint

responsibility requires international cooperation to support the efforts of developing countries to solve their economic and social problems, and create an environment conducive to the promotion of human development.<sup>19</sup>

The realization of the right to development involves numerous measures in the sphere of both international economic law and policy. Thus, for example, developed countries are called on to grant significant non-reciprocal trade preferences to poor countries, international institutions to establish adequate intellectual property rules to allow poor people access to life-saving medicines, and international financial institutions to provide adequate assistance to promote human development. From this perspective, the World Trade Organization is urged to adopt a broad range of measures, including the evaluation of the impact of member states' trade policies on the right to development (as part of the Trade Policy Review Mechanism), the expansion and reform of technical assistance programs to developing countries, the enhancement of the role of poor countries and human rights organizations in the negotiations leading to new WTO agreements, the interpretation of trade legal rules in accordance with the right to development,<sup>20</sup> and the establishment of progressive rules of origin to ease the asymmetric impacts of such rules on poor countries (Hirsch 2010, para. 18).

### **India, Economic Development, and the Right to Development**

Exploring the experience of India with regard to the right to development is particularly relevant because, in light of its institutional weakness (discussed earlier), the country has adopted some prominent laws and policies significantly linked with the right to development, such as laws concerning the rights to education, food, and employment.

Several factors contribute to the adoption of rights-based laws and policies in India: an established tradition of “public interest litigation” in the Indian legal system (see, for example, Jacobs and Sen 2012; Cunningham 1987); judicial activism, including an increased inclination by the Supreme Court to refer to the United Nations *Declaration on the Right to Development*; strong networks and campaigns advocating such legislation and measures; and a free press and wide media coverage of these campaigns (Kumar 2013; Wolf 2015). The following chapters address some thought-provoking interactions between the right to development and various statutes and policies undertaken by India, as well as some of the rights-based approach to economic development.

## Summary of Chapters

### **Chapter 1: India's National Food Security Act and the WTO Agreement on Agriculture, by Milind Murugkar**

This chapter addresses the implementation of one of the more prominent rights included in the broader right to development: the right to food. The importance of access to food was underlined in Article 8 of the *Declaration on the Right to Development* and additional major international instruments (such as the *Universal Declaration of Human Rights*<sup>21</sup> and the *International Covenant on Economic, Social and Cultural Rights*<sup>22</sup>). It presents the 2013 Indian *National Food Security Act* (NFSA), which guarantees a certain quantity of food grains at subsidized rates to nearly two-thirds of India's population. This act can be considered as the biggest-ever experiment by any government in distributing subsidized food through a rights-based approach. Murugkar shows that the primary aim of the NFSA (to provide food security to the common citizen) is not at odds with the WTO regime. He analyzes the source of the conflict between the Indian government's commitment to provide food security to its citizens and its commitment under the WTO regime. He suggests that moving from a system of in-kind transfers to a system of cash transfers would mitigate this conflict and help India achieve coordinated compliance with its food security goals and its commitment under the WTO. An important lesson coming out of this study is that what has been thought of as a conflict between the domestic mandate for food security and the obligations under the WTO *Agreement on Agriculture* could be avoided by choosing alternate ways to ensure food security.

### **Chapter 2: Primary Education in India: Evidence and Practice, by Ashok Kotwal, Bharat Ramaswami, and Wilima Wadhwa**

This chapter examines the implementation of the right to education in India and its implications for international trade. Promoting the right to development necessitates protecting the right to education,<sup>23</sup> a right recognized in the *Universal Declaration of Human Rights* (Article 26) and the *International Covenant on Economic, Social and Cultural Rights* (Articles 13 and 14). The *Right to Education Act* (RTE) was enacted by the Indian parliament in 2010. It aims to ensure that all children are enrolled in schools and requires schools to have certain provisions, mostly in terms of physical infrastructure. This chapter presents results from a methodical analysis of learning outcomes

and their determinants. It finds that physical infrastructure actually matters very little for learning outcomes; what matters are the pedagogical issues that are not mentioned in the RTE. In other words, the rights-based approach can ensure that every child has access to education but it cannot ensure a satisfactory learning outcome. Education, in addition to being a human right, is a key component of the process of development. Chapter 2 suggests a series of measures that would improve the learning outcomes and spur the process of development. “Right to education” should be interpreted as “right to quality education.”

### **Chapter 3: Ensuring the Right to Work through Better Governance, by Ashwini Kulkarni**

This chapter focuses on the right to work as implemented by the *Mahatma Gandhi National Rural Employment Guarantee Act* (MGNREGA). The right to work is internationally recognized<sup>24</sup> in the *Universal Declaration of Human Rights* (Article 23) and the *International Covenant on Economic, Social and Cultural Rights* (Article 6). The *Declaration on the Right to Development* does not explicitly mention the right to employment, but it is certainly related in various ways to the promotion of the human right to development (see, for example, OHCHR 2013, 55, 121, 349, 367). This chapter clarifies that the MGNREGA not only constitutes a significant tool of redistribution but is also an instrument to improve rural infrastructure, as well as increase agricultural productivity (hence, the act is also related to the right to food). Kulkarni aims to explain which mechanisms are more likely to improve the implementation of this federal scheme in various constituent states in India. The chapter presents the result of extensive fieldwork undertaken in two states (Maharashtra and Andhra Pradesh), and concludes that the use of information technology and decentralization in governance structures are the primary reasons why the MGNREGA was better implemented in Andhra Pradesh than in Maharashtra. These lessons are important for improving protection of the right to work and promoting economic development in India, and possibly also in other countries.

### **Chapter 4: From Cautious Support to Precautionary Paralysis: The Evolution of India’s Regulatory Regime for Transgenics, by Milind Kandlikar**

There is a popular perception that large corporations like Monsanto have

taken advantage of the present regime of intellectual property rights to short-change farmers and consumers from developing countries. Several non-governmental organizations (NGOs) with worldwide influence have raised concerns about the possible harm that the use of genetic modification or transgenic technology in agriculture can inflict on the health of humans and the environment. Whether or not this is true for a specific technology in a given country is a question for scientists to answer. Globalization can have a multifaceted impact on the developmental outcomes of a country such as India. On one hand, it offers productivity-enhancing technology to India's agriculture; on the other hand, it allows international NGOs to influence the domestic technological policy through an excessive and unwarranted use of the "precautionary principle." This chapter examines how India, a developing country with a large agrarian rural population, has regulated and controlled the use of transgenics in the agricultural sphere, focusing primarily on issues relating to biosafety. Kandlikar traces the evolution of the Indian government's policies from tentative support to regulatory paralysis, explaining why India has taken an increasingly precautionary approach.

### **Chapter 5: Child Malnutrition, Infant Feeding Practices, and Information: Evidence from India, by Nisha Malhotra**

This chapter addresses the link between access to food and the right to health against the background of infant feeding and the World Health Organization's (WHO) feeding guidelines for a child's optimal growth. The *Declaration on the Right to Development* underlines the importance of health services (Article 8), and the human right to health has also been recognized in central international treaties, such as *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (Article 12). The particular importance of protecting the right to health of children is emphasized by both the ICESCR<sup>25</sup> and the *Convention on the Rights of the Child*.<sup>26</sup> The chapter observes that child malnutrition is widespread in India and underlines the significance of adequate feeding practices for the reduction of child malnutrition and prevention of severe health consequences.

Malhotra's study indicates that the main obstacle to ensuring proper child nutrition in India is the lack of scientific information about nutrition. It points out that the existing feeding practices in India do not follow the WHO recommendations. The chapter recommends extensive intervention

in nutritional practices aimed at educating families about proper feeding practices, including counselling on traditional beliefs. This study illustrates the essential link between the work of international institutions, national policies, and local impediments to the implementation of international agencies' recommendations.

### **Chapter 6: Foreign Direct Investment and Intergroup Disparities in India, by Ashwini Deshpande**

This chapter addresses one of the sensitive features of Indian society: gender and intergroup discrimination. Promoting the right to development requires significant reduction of discrimination along caste and gender lines,<sup>27</sup> and freedom from discrimination constitutes an element of virtually every major international human rights instrument,<sup>28</sup> such as the *Universal Declaration of Human Rights* (Articles 2 and 7) and the *International Covenant on Economic, Social and Cultural Rights* (Article 2). There is a belief that with greater economic liberalization, specifically with the entry of foreign direct investments, caste disparities and gender inequality will decline. This expectation is related, *inter alia*, to the anticipation that foreign agents are less likely to share local prejudices. Deshpande concludes that such an expectation is not supported by Indian data. These findings are significant for India (and other developing countries) and indicate that economic liberalization measures are not sufficient to eradicate intergroup or gender discrimination, and that effective programs undertaken by public institutions are vital to counter such prejudices.

### **Chapter 7: Climate Change Mitigation: The Indian Conundrum, by Milind Kandlikar and Simon Harding**

This chapter sheds light on the complex interactions between climate change, human rights, and economic development. Recent studies and reports have highlighted the negative impacts of climate change on human health and human rights, such as diminished health and access to food, water, and shelter. Low-income countries and people belonging to weaker groups are particularly vulnerable to such adverse environmental and health effects (e.g., poor people, members of minority groups, women, children, and seniors).<sup>29</sup> The authors emphasize the multifaceted interrelationships between climate change reduction measures and economic development in India. On the one hand, in order to lift hundreds of millions out of poverty,

the Indian economy needs carbon space to grow; on the other, it is overwhelmingly in India's interest to keep carbon emission paths low (under the 2°C benchmark): one-fifth of the world's poorest people live in India and they form the largest group of individuals vulnerable to climate change within a single nation. Facing this conundrum, the chapter highlights the idea of "co-benefits" as a policy emphasis in India's carbon mitigation efforts. It uses the case of indoor air pollution in rural India to examine how development-oriented policies can have significant benefits for climate mitigation.

### **Conclusion, by Moshe Hirsch, Ashok Kotwal, and Bharat Ramaswami**

This chapter briefly recaps some prominent conclusions drawn from the preceding chapters and emphasizes that implementation deficiencies identified in those chapters are related to some limitations of the rights-based approach to development in general, which, in turn, is related to the institutional weakness of the country. An active judiciary, civil society groups, and a free press are essential for promoting the human rights based approach to development because they may pressure state officials to initiate poverty reduction programs and occasionally supervise their implementation. However, these significant actors do not possess the required resources, such as expertise and capital, to administer large-scale programs, particularly given the vastness and diversity of India. Thus, while these actors are valuable for promoting the socio-economic rights of poor people, they cannot substitute for weak institutions. Finally, this chapter offers some policy recommendations to Canadian policy makers regarding productive dialogue between the two countries and certain joint strategies to enhance human rights based approaches to economic development in India. These recommendations relate to common democratic values, implementation of local legislative measures, support for local actors, joint consultative networks, monitoring and dissemination of information, training programs, and initiatives in multilateral economic institutions.

### **NOTES**

- 1 Due to a change in the official definition of the poverty line, it is not possible to construct a consistent time series. However, using overlapping periods, it is possible to ascertain trends. We use the findings in Kotwal, Ramaswami, and Wadhwa 2011 and Narayan and Murgai 2016.

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**Library and Archives Canada Cataloguing in Publication**

Title: A human rights based approach to development in India /  
edited by Moshe Hirsch, Ashok Kotwal, and Bharat Ramaswami.

Names: Hirsch, Moshe, editor. | Kotwal, Ashok, editor. | Ramaswami, Bharat, editor.

Series: Asia Pacific legal culture and globalization (Series)

Description: Series statement: Asia Pacific legal culture and globalization,  
ISSN 1925-0320 (print), ISSN 1925-0339 (ebook)

Identifiers: Canadiana (print) 20190093471 | Canadiana (ebook) 2019009348X |  
ISBN 9780774860307 (hardcover) | ISBN 9780774860321 (PDF) |  
ISBN 9780774860338 (EPUB) | ISBN 9780774860345 (Kindle)

Subjects: LCSH: Economic development – India. | LCSH: Economic development –  
Moral and ethical aspects – India. | LCSH: Economic development – Social  
aspects – India. | LCSH: India – Economic policy – 1991-2016. | LCSH: India –  
Economic policy – 2016- | LCSH: India – Economic conditions – 1991- |  
LCSH: Human rights – India.

Classification: LCC HC435.3 .H86 2019 | DDC 338.954 – dc23

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**Canada**

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada (through the Canada Book Fund) and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Awards to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada.

Set in Futura Condensed and Warnock by Artegraphica Design Co. Ltd.

Copy editor: Frank Chow

Proofreader: Caitlin Gordon-Walker

Indexer: Celia Braves

Cover designer: Setareh Ashrafologhalai

UBC Press

The University of British Columbia

2029 West Mall

Vancouver, BC V6T 1Z2

[www.ubcpress.ca](http://www.ubcpress.ca)