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# Distributive Justice and the Sustainable Development Goals: Delivering Agenda 2030 in India

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**Abstract:** The sustainable development goals (SDGs) present a real opportunity to direct India towards a path of equality and equity. This article posits that India's plans to achieve the millennium development goals by the end of their term in 2015 faltered because reforms designed to alleviate poverty and achieve equitable growth did not adequately address weaknesses in institutions of accountability, which undermined the reform agenda. These institutions, which include Parliament and the judiciary, exist in part to ensure that actions taken by public officials are subject to oversight so that government initiatives meet their stated objectives. As India shifts its attention to Agenda 2030, its renewed commitment to institutional reforms represents an occasion for the state to address the inequalities in income and the resulting human development concerns. For the government to achieve the SDGs, this article suggests that India must integrate what we refer to as a baseline conception of distributive justice within its plans, which can account for structural barriers to its development arising from ineffective institutions of accountability and provide the poor with a route towards individual empowerment.

**Keywords:** India, SDGs, international development, institutions, inequality, distributive justice

## 1 Introduction

As the world stumbles through intense globalization and confronts rising income inequality, India has made significant strides in poverty reduction. The implementation of a number of strategic schemes and policies in pursuit of the millennium development goals (MDGs) has led to significant improvements in quality of life and other outcomes, including reducing child and maternal

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mortality and controlling the spread of infectious diseases.<sup>1</sup> Still, there are major criticisms tied to the country's approaches to achieving the MDGs, which have fallen short of ensuring inclusive and equitable development despite rapid and significant economic growth.<sup>2</sup> Deepening inequality indicates that the benefits of India's remarkable economic growth have not "trickled down," particularly among its most vulnerable and marginalized population.<sup>3</sup> It seems that India is far from reaching its true potential<sup>4</sup> and questions as to why plans to achieve the MDGs were not satisfactorily deployed remain unanswered.

With the international community having turned its attention to the sustainable development goals (SDGs) after the 2015 deadline for the MDGs, India's success in realizing its renewed development agenda impinges upon a sustained and credible political commitment from its government, as well as financial resources and effective policies and programmes to improve outcomes for its poor and marginalized populations. In the period of globalization that began in 1980, inequalities in income have widened sharply, creating unprecedented challenges to achieving the task initiated at the very start of the United Nations itself: securing basic material needs for everybody on the planet.<sup>5</sup> Thus, the need for high-profile development goals as a strategy for global mobilization around a set of urgent priorities is as apparent as ever.

In this article, we posit that India's plans to achieve the MDGs faltered because reforms designed to alleviate poverty and achieve equitable growth did not address weaknesses in institutions of accountability. Such institutions, which include Parliament and the judiciary, exist in part to ensure that actions taken by public officials are subject to oversight so that government initiatives, including reforms, meet their stated objectives. In India, however, issues such as weak and changing political will and agenda, poor accountability mechanisms, weak enforcement mechanisms, corruption, and the politicization of institutions have overshadowed the reform agenda. As India shifts its attention to the SDGs, its renewed commitment to institutional reforms represents a real opportunity for the state to address human development concerns, which we suggest call for

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1 Pranab Bardhan, *Awakening Giants, Feet of Clay* (Princeton: Princeton University Press, 2012).

2 Suman Kannoujia, *Inclusive and Sustainable growth in India – Issues and Challenges*, 2 International Journal of Applied Research, no. 8 (2016), 581.

3 World Bank, "India's Poverty Profile" (May 2016), available at: <<http://www.worldbank.org/en/news/infographic/2016/05/27/india-s-poverty-profile>>.

4 Report by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP). (2015). *India and the MDGs: Towards a Sustainable Future for All*, p. 7, available at: <[http://www.unescap.org/sites/default/files/India\\_and\\_the\\_MDGs\\_0.pdf](http://www.unescap.org/sites/default/files/India_and_the_MDGs_0.pdf)>.

5 Jeffrey D. Sachs, "From Millennium Development Goals to Sustainable Development Goals" 379 Lancet 2206–11 (2011).

clear focus on distributive justice in its development agenda. We argue that in order for India to be a truly participatory democracy, it must invest in building the capabilities<sup>6</sup> of its inhabitants and translate its de jure commitments of equal opportunities into de facto realizations. In particular, the government's so-called "universal game changer"<sup>7</sup> action plan should prioritize programmes and schemes related to health, education, sanitation, and food security, which could truly change the game for the poor by 2030.

The following section provides an introduction to the MDGs, focusing on the extent to which lessons from China might be applicable in India, and what progress India itself has made to attain the development goals. Section 3 examines the notion of distributive justice, attempts to locate a basis for a focus on such justice within India's legal system, and develops a baseline conception of distributive justice that can account for structural barriers to India's development and provide the poor with a route towards individual empowerment. From there, Section 4 presents Agenda 2030 and assesses whether India has made a credible commitment to achieving the targets enshrined in the SDGs. It applies the baseline conception of distributive justice to the legal and political context in India. It also discusses the concrete efforts and institutional changes being undertaken by India to commit to distributive justice and improve outcomes under the Agenda 2030, with a particular focus on reforms in the areas of health and education.

## 2 India and the Global Development Goals

Globally, the MDGs have generated new and innovative partnerships, galvanized public opinion, and demonstrated the immense value of setting ambitious goals.<sup>8</sup> While more than one billion people have been lifted out of extreme poverty, inroads have been made against hunger and more girls than ever before have been able to attend school, inequalities persist, and progress has been uneven.<sup>9</sup> With attention now turned to the SDGs, this section examines India's commitment to achieving the latest global development goals and assesses what progress the country has made towards achieving them. It then looks to lessons that might be drawn from the development

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<sup>6</sup> See Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011).

<sup>7</sup> Government of India, National Institution for Transforming India (NITI) Aayog, *A Universal Game Changer*, available at: <<http://niti.gov.in/content/universal-game-changer>>.

<sup>8</sup> See Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011).

<sup>9</sup> Government of India, National Institution for Transforming India (NITI) Aayog, *A Universal Game Changer*, available at: <<http://niti.gov.in/content/universal-game-changer>>.

strides made by another global power, China, finding that India has lagged behind China in alleviating poverty, and highlighting the differences in the institutional context that exists in each state.

## 2.1 The SDGs and India's Credible Commitment

India appears to have taken tangible initial steps to realizing the newest set of global development goals, the SDGs.

In 2000, the MDGs were originally developed as a solution to the slow progress of human and economic development around the world. The framework addressed issues of fundamental human dignity promised by the Universal Declaration of Human Rights 1948 and the ensuing generation of human rights conventions. The MDGs were a set of targets for the year 2015 that relate to key achievements in human development. They included halving income-poverty and hunger; achieving universal primary education; promoting gender equality and empowering women; reducing infant and child mortality by two-thirds; decreasing maternal mortality by three-quarters; combating HIV/AIDS, malaria, and other communicable diseases; and ensuring environmental sustainability and developing a global partnership for development.<sup>10</sup>

The SDGs benefit from the valuable lessons learned from MDGs. They also carry forward the unfinished agenda of the MDGs for continuity, and sustain the momentum generated while addressing the additional challenges of inclusiveness, equity, and urbanization and further strengthening global partnership by including CSOs and private sector.<sup>11</sup> They reflect continuity and consolidation of MDGs while making these more sustainable by strengthening environmental goals.<sup>12</sup>

The SDGs include 17 goals and 169 targets.<sup>13</sup> To create this new, individual-centred development agenda, a series of global consultations were conducted

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**10** World Bank, "Poverty and Shared Prosperity 2018" (2018), available at: <<http://www.worldbank.org/en/publication/poverty-and-shared-prosperity>>.

**11** Adar Poonawalla, "Swachh Bharat: Private participation can set into motion permanent narrative for cleaner India", *The Economic Times*, available at: <<https://blogs.economictimes.indiatimes.com/et-commentary/swachh-bharat-private-participation-can-set-into-motion-a-permanent-narrative-for-cleaner-india/>>.

**12** *Ibid.*

**13** United Nations General Assembly, "Resolution adopted by the General Assembly on 25 September 2015: 70/1. Transforming our world: the 2030 Agenda for Sustainable Development", 17th Session, Agenda items 15 and 16 (21 October 2015), available at: <[https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E;)>; Government of India, National Institution for Transforming India (NITI) Aayog, A Universal Game Changer, available at: <<http://niti.gov.in/content/universal-game-changer>>.

with civil society organizations, citizens, scientists, academics, and private sectors from around the world.<sup>14</sup> The 17 goals in abridged form are as follows: no poverty; zero hunger; good health and well-being; quality education; gender equality; clean water and sanitation; affordable and clean energy; decent work and economic growth; industry, innovation, and infrastructure; reduce inequality; sustainable cities and communities; responsible consumption and production; climate action; life under water; life on land; peace, justice, and strong institutions; and partnership for the goals.

The SDGs are reflected in India's official national development agenda and its commitment to ending poverty and ensuring prosperity for all. India's adoption of the SDGs is not only made in an effort to complete the unfinished work of the MDGs but also show renewed commitments to accelerate the pace of development and to include new targets. In 2015, the National Development Agenda identified health, nutrition, education, women, and children as the main priorities of India's growth.<sup>15</sup> The SDGs also include specific plans to target sanitation, hygiene, and digital connectivity.

The political commitment to the development agenda set out in the SDGs is reflected in new policies and schemes along with a supporting institutional framework to monitor the progress and improve outcomes. In 2015, the Government of India created the National Institution for Transforming India (NITI) Aayog, which replaced the outdated Planning Commission instituted in 1950.<sup>16</sup> The NITI Aayog oversees the SDG implementation and monitors each state's performance.

It appears that the state has made a tangible commitment to meeting targets with the aim of dramatically improving human development indicators that have not been commensurate with the rate of economic growth. The focus on health, education, food security, access to potable water, and sanitation is well aligned with goal of strengthening the capabilities of India's people.<sup>17</sup>

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<sup>14</sup> Preamble to 'Transforming our world: the 2030 Agenda for Sustainable Development', Sustainable Development Knowledge Platform, available at: <<https://sustainabledevelopment.un.org/post2015/transformingourworld>>.

<sup>15</sup> Report by the Government of India, National Institute of Transforming India (NITI) Aayog, *Health* (2018), available at: <<http://social.niti.gov.in/health-index>>.

<sup>16</sup> The Government of India, Overview, The National Institution of Transforming India (NITI) Aayog (2017), available at: <<http://www.niti.gov.in/content/overview/>>.

<sup>17</sup> Ingrid Robeyns, "The Capability Approach." Stanford Encyclopedia of Philosophy (April 8, 2017), available at: <<https://plato.stanford.edu/entries/capability-approach/>>; see also Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011), p. 69; Jean Dr  ze and Amartya Sen, *Hunger and Public Action* (New York: Oxford University Press, 1989), p. 46.

India aims to reduce infant mortality rates to 28% by 2019, which would be a significant improvement from its 40% rate in 2015–2016.<sup>18</sup> India also plans to completely immunize 90% of newborn babies by 2025<sup>19</sup> and to achieve the global target of 90-90-90 for HIV/AIDS by 2020.<sup>20</sup> The NITI Aayog is tasked with the Health Index initiative<sup>21</sup> as well as with monitoring each state's performance on specific health indicators.<sup>22</sup>

Although India has made significant improvement towards ending hunger and improving nutrition, in 2015/2016, a staggering 35.7% of children under the age of 5 were underweight. This is a reduction from the 42.5% of under 5 malnutrition, in 2005/2006.<sup>23</sup> Malnutrition and stunting of children under the age of 5 denies them of a level playing field in spite of de jure commitment to inclusive development.<sup>24</sup> Such malnutrition exists despite India having one of the world's largest food security programmes. The government provides affordable access to grains for 800 million people through the Public Distribution System and has expanded the Mid-Day Meal Programme to deliver nutritious meals to 100 million children in primary schools.<sup>25</sup>

India's National Education Mission focuses on providing universal elementary education to all children.<sup>26</sup> The mission aims to bridge gender-related inequalities and improve the learning outcomes of children. The Right to

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**18** Report by the United Nations High Level Political Forum, '*Voluntary National Review Report on Implementation of Sustainable Development Goals*' (2017), p. 24, available at: <[http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)>.

**19** *Ibid.*

**20** *Ibid.* The 90–90-90 target provides that, by 2020, 90% of all people living with HIV will know their HIV status; 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy; and 90% of all people receiving antiretroviral therapy will have viral suppression. For more information, see: <<http://www.unaids.org/en/resources/909090>>.

**21** Executive summary by the National Institution for Transforming India (Government of India), p. 2, available at: <[http://social.niti.gov.in/uploads/sample/state\\_health\\_index\\_executive\\_summary.pdf](http://social.niti.gov.in/uploads/sample/state_health_index_executive_summary.pdf)>.

**22** Report by the Government of India, National Institute of Transforming India (NITI) Aayog, *Health* (2018), available online: <<http://social.niti.gov.in/health-index>>.

**23** Report by the United Nations High Level Political Forum, '*Voluntary National Review Report on Implementation of Sustainable Development Goals*' (2017), p. 11, available at: <[http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)>.

**24** Nandini Ramanujam and Sarah Berger-Richardson, *Ending child malnutrition under SDG2: The moral imperative for global solidarity and local action*, 37 *Social Alternatives*, no.1 (2018).

**25** United Nations, *India: Voluntary National Review 2017*, Sustainable Development Knowledge Platform (2017), available at: <<https://sustainabledevelopment.un.org/memberstates/india>>.

**26** Report by the United Nations High Level Political Forum, *Voluntary National Review Report on Implementation of Sustainable Development Goals* (2017), p. 9, available at: <[http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)>.

Education Act ensures that children between the ages of 6 and 14 are given free, equitable, and compulsory education.<sup>27</sup>

A number of indicators show that India has made improvements in bridging gender inequality. In 2015–2016, 68.4% of women were literate, as compared to 55.1% in 2005–2006.<sup>28</sup> Furthermore, 53% of women were independently using savings account in 2015–2016, a stark improvement from 15.1% in 2005–2006.<sup>29</sup> Various measures have been introduced to improve gender equality. This includes the Beti Bachao, Beti Pado (Save the Girl Child, Educate the Girl Child) initiative,<sup>30</sup> which provides security and education interventions for young girls.

A crucial component of India's development includes providing adequate and safe drinking water and improving sanitation.<sup>31</sup> India has pledged to achieve universal and equitable access to safe and affordable drinking water by 2030.<sup>32</sup> The National Rural Drinking Water Programme has provided 77% of rural habitations with 40 litres of drinking water per capita, on a daily basis.<sup>33</sup> India has also initiated the Swachh Bharat Abhiyaan (Clean India Movement) to address its sanitation woes on an urgent basis and ensure that India is free from open defecation by 2019.<sup>34</sup> So far, more than 39 million households toilets have been constructed and more than 193,000 villages have been deemed successful in ending the practice of open defecation.<sup>35</sup> This initiative is also exploiting the potential of public–private partnership in order to effectively achieve the ambitious agenda.<sup>36</sup>

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, p. 19.

<sup>29</sup> *Ibid.*

<sup>30</sup> United Nations, *India: Voluntary National Review 2017*, Sustainable Development Knowledge Platform (2017), available at: <<https://sustainabledevelopment.un.org/memberstates/india>>.

<sup>31</sup> *Ibid.*

<sup>32</sup> Government of India, *Sustainable Development Goals (SDGs) Targets, CSS, Interventions, Nodal and other Ministries* NITI Ayog, Development of Monitoring and Evaluation Office (2017), p. 10.

<sup>33</sup> United Nations, *India: Voluntary National Review 2017*, Sustainable Development Knowledge Platform (2017), available at: <<https://sustainabledevelopment.un.org/memberstates/india>>.

<sup>34</sup> Report by the United Nations High Level Political Forum, '*Voluntary National Review Report on Implementation of Sustainable Development Goals*' (2017), p. 9, available at: <[http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)>.

<sup>35</sup> United Nations, '*India: Voluntary National Review 2017*,' Sustainable Development Knowledge Platform (2017), available at: <<https://sustainabledevelopment.un.org/memberstates/india>>.

<sup>36</sup> Adar Poonawalla, "Swachh Bharat: Private participation can set into motion permanent narrative for cleaner India", *The Economic Times*, available at: <<https://blogs.economictimes>>.



## 2.2 Lessons from China's Development Success Story

China is often looked to for lessons on how to reduce poverty and is seen as a successful story of a “developmental state.”<sup>37</sup> Unlike India, China has a centrally planned economy and a non-democratic political structure led by the Communist Party.<sup>38</sup> As such, while the desire of the government is reflected in the regulation of economic transactions in China, “market competition among private companies drives the rules of the game in India.”<sup>39</sup> In addition, China's better performance than India's over this period may provide support for the contested claim that authoritarianism may be more conducive to development at the early stages.<sup>40</sup>

The turn of the millennium witnessed the rise of China and India on the global economic stage.<sup>41</sup> It is unquestionable that both countries have experienced strong economic growth, and with it, substantial declines in poverty levels. A recent World Bank report argued that the reduction in extreme poverty globally was largely attributed to the rapid progress and amelioration of poverty in India and China.<sup>42</sup>

Almost all the countries in the world, including India, committed themselves to attaining the targets embodied in the Millennium Declaration and to reaching the specified goals by 2015. The Indian government implemented various programmes, policies, and schemes to combat the barriers to poverty reduction and development, and to intensify efforts towards achieving the

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[indiatimes.com/et-commentary/swachh-bharat-private-participation-can-set-into-motion-a-permanent-narrative-for-cleaner-india/](http://indiatimes.com/et-commentary/swachh-bharat-private-participation-can-set-into-motion-a-permanent-narrative-for-cleaner-india/).

<sup>37</sup> Pranab K. Bardhan, *Awakening Giants, Feet of Clay: Assessing the Economic Rise of China and India* (Princeton University Press, 2009), Ch. 1, p. 4.

<sup>38</sup> Nandini Ramanujam et al., *The Rule of Law and Economic Development: A Comparative Analysis of Approaches to Economic Development across the BRIC Countries* (Montreal: Rule of Law and Economic Development Research Group, 2012), available at: <[www.mcgill.ca/roled/files/roled/mcgill\\_roled\\_report\\_2012.pdf](http://www.mcgill.ca/roled/files/roled/mcgill_roled_report_2012.pdf)>.

<sup>39</sup> Kazuyuki Motohashi, *Comparison of Economic Institutions in China and India*, Global Business Strategy (2015), pp 57–76.

<sup>40</sup> Pranab K. Bardhan, *Awakening Giants, Feet of Clay: Assessing the Economic Rise of China and India* (Princeton University Press, 2009), Ch. 1, p. 4.

<sup>41</sup> Pranab Bardhan, *Awakening Giants, Feet of Clay*, (Princeton: Princeton University Press, 2012).

<sup>42</sup> World Bank, “Poverty and Shared Prosperity 2018” (2018), available at: <<http://www.worldbank.org/en/publication/poverty-and-shared-prosperity>>.



MDGs.<sup>43</sup> Unfortunately, there was very little understanding as to whether India could reach the targets of all the MDGs in practice. This led to a broader level of scepticism as to whether the targets-based approach entrenched in the MDGs was a useful framework to promote development.

As the largest developing country in the world, China's efforts to implement the MDGs provide a useful comparison point for India. Since China began its market reforms in the late 1970s, it has lifted more than 800 million people out of poverty, slashing the rate from nearly 90% in 1981 to under 2%.<sup>44</sup> As we recall, the MDGs sought to halve extreme poverty between 1990 and 2005. Over that time, the number of people worldwide living in extreme poverty went down by over a billion, to 840 million, with China accounting for about half the drop.

The way in which China implemented policies that allowed it to take advantage of the rise of globalization may not be easily copied by other countries, given the ever-shifting global economic landscape.

For example, when companies first began to shift factories from the developed world to China, wages in the country were extremely low. Even by 2004, Chinese factory workers earned an estimated 64 cents per hour, compared to \$2.48 in Mexico.<sup>45</sup> At the same time, China enjoyed a relatively well-developed infrastructure that made it more attractive than other countries with large, low-paid labour forces. In the 1980s, China launched major efforts to build dams, irrigation projects and highways. The "Food-for-Work" program, which offered free meals to workers, promoted highway construction in rural areas. Between 1994 and 2000, some 42,000 kilometers of rural highways were built a year. Even now, India manages just about 20 kilometres a day.<sup>46</sup> Thus, by the early 2000s, China had a unique and probably unrepeatable combination of low, developing-country wages and strong infrastructure.<sup>47</sup>

In addition, China benefited tremendously from innovation in consumer electronics. The rising popularity of gadgets such as personal computers and mobile phones first started to change consumers' lives in the 1980s and 1990s – opening up new lines of manufacturing. China's export boom over that period

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43 Anita Nath, *India's Progress towards Achieving the Millenium Development Goals*, 36 *Indian Journal of Community Medicine*, no. 2 (2011), 85–92, available at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3180952/>>.

44 Zheping Huang and Tripti Lahiri, "China's path out of poverty can never be repeated at scale by a country again" (September 21, 2017), available at: <<https://qz.com/1082231/chinas-path-out-of-poverty-can-never-be-repeated-at-scale-by-any-other-country/>>.

45 *Ibid.*

46 *Ibid.*

47 *Ibid.*

was largely driven by electronics and machinery.<sup>48</sup> Between 1992 and 2005, Chinese manufacturing exports shifted significantly from agriculture and soft goods, such as textiles and clothing, to higher-value items like consumer electronics and appliances. As demand for these goods was about to explode, barriers to selling to the US and Europe were coming down, particularly after China entered the World Trade Organization in 2001.<sup>49</sup> That context differs significantly from the rising protectionism we see today, especially with populist and nationalistic rhetoric on the rise in the West. China's share of global exports reached 13.8% in 2015, the highest share any country has enjoyed since the US almost 50 years ago.<sup>50</sup>

China's economic rise also occurred at a time when it had little competition from automation. When it began opening its doors to foreign investment, factories looking to cut costs had few alternatives to low-wage humans.<sup>51</sup> Now countries thinking of focusing on boosting manufacturing and exports are competing against other low-wage economies – and countries in the developed world that can take advantage of the productivity gains made possible through automation.<sup>52</sup> According to consulting firm Boston Consulting Group (BCG), the share of manufacturing tasks performed by robots will go from around 10% now, to 25% in 2025, which could help keep factories close to markets.<sup>53</sup>

On October 12, 2016, China released its national plan for implementing the 2030 Agenda for Sustainable Development, which translates each target of the SDGs into “action plans” for China.<sup>54</sup> Interestingly, the plan includes an “institutional guarantee,” which refers to the institutions, mechanisms, and policies that will support the implementation of the 2030 Agenda. It includes promoting targeted reforms to establish an institutional framework for the implementation of the 2030 Agenda. Guided by the overarching goal of advancing socialism with Chinese characteristics and promoting the modernization of the national governance system and capacity, the Chinese government will step up the improvement of institutions and systems to ensure that the market plays the decisive

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<sup>48</sup> *Ibid.*

<sup>49</sup> World Trade Organization, “China and the WTO” (2018), available at: <[https://www.wto.org/english/thewto\\_e/countries\\_e/china\\_e.htm/](https://www.wto.org/english/thewto_e/countries_e/china_e.htm/)>.

<sup>50</sup> Zheping Huang and Tripti Lahiri, “China's path out of poverty can never be repeated at scale by a country again” (September 21, 2017), available at: <<https://qz.com/1082231/chinas-path-out-of-poverty-can-never-be-repeated-at-scale-by-any-other-country/>>.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> Delia Paul, “China Releases National Plan to Implement SDGs” (October 17, 2016), available at: <<http://sdg.iisd.org/news/china-releases-national-plan-to-implement-sdgs/>>.

role in resource allocation and the government better plays its role, and remove all institutional barriers to scientific development, so as to provide institutional impetus for the implementation of the 2030 Agenda.

While China appears to have made significant progress in its aim of lifting its people out of poverty overall, India's progress paints a different picture. Undoubtedly, India has made notable strides in poverty reduction and has implemented several strategic schemes and policies in pursuit of the MDGs; however, the country's progress has not been on the same pace or scale as China.<sup>55</sup> India occupies the 131st rank on the Human Development Index (HDI) compared to the 91st rank held by China, classifying India as "medium" and China as "high" in terms of human development according to the UNDP (HDI was created to emphasize that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone).<sup>56</sup> A major criticism has been India's failure to ensure inclusive growth and development.<sup>57</sup> Growing inequalities, particularly between urban and rural areas in China is a cause for concern for China as well.<sup>58</sup> China's ability to sustain the pace of economic growth witnessed over the past four decades is also under great deal of scrutiny.<sup>59</sup>

### 3 Locating a Baseline Conception of Distributive Justice

The previous section has shown that India has lagged behind China in alleviating poverty amidst a period of rapid globalization. While India is the world's largest democracy, supported by a highly diverse society and a rapidly growing economy, its growth potential has been hindered by deep structural inequalities

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55 Pranab Bardhan, *Awakening Giants, Feet of Clay* (Princeton: Princeton University Press, 2012).

56 United Nations Development Programme, "Human Development Report 2016" (2016), available at: <[http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)>.

57 Suman Kannouji, *Inclusive and Sustainable growth in India – Issues and Challenges*, 2 International Journal of Applied Research, no. 8 (2016), 581.

58 Sonali Jain-Chanda, et al., "Inequality in China – Trends, Drivers and Policy Remedies", *IMF Working Paper* (2018), available at: <<https://www.imf.org/~media/Files/Publications/WP/2018/wp18127.ashx>>.

59 Alistair Dieppe et al., "The transition of China to sustainable growth – Implications for the global economy and the euro area", *European Central Bank* (2018), available at: <<https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op206.en.pdf>>.

and entrenched social barriers affecting workforce participation.<sup>60</sup> The economic gap between India's diverse regions and groups is staggering. The GDP per capita of Bihar, India's poorest state, is roughly ten times less than the GDP per capita of Goa.<sup>61</sup> Moreover, 25% of Indians are part of the historically disadvantaged scheduled tribes or scheduled castes<sup>62</sup> but they account for 43% of India's poor.<sup>63</sup> Scheduled tribes have the highest concentration of poor people at 43% compared to 12% in non-tribe or non-caste groups.<sup>64</sup>

One of the major factors that has led to growing inequality and disparate social development in India are barriers to women's participation in the workforce. The female employment rate in India, taking into account both the formal and informal economy, has declined from 35% in 2006 to 26% in 2018.<sup>65</sup> The Indian economy doubled in size in this span of time, and the number of working-age women increased by 25%, totalling 470 million.<sup>66</sup> Societal views regarding women's participation in the workforce are partly responsible for the situation. In a 2012 survey, 84% of Indians felt that men have a greater right to work than women when jobs are limited.<sup>67</sup> By contrast, census data on this issue shows that a third of stay-at-home women would work if given the opportunity.<sup>68</sup>

For India to address these inequalities and achieve the SDGs, we posit that it must integrate a baseline conception of distributive justice within its reform agenda, which can account for structural barriers to its development arising

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**60** S. Mahendra Dev, "Inequality, Employment and Public Policy", Indira Gandhi Institute of Development Research, Mumbai (2018), available at: <<http://www.igidr.ac.in/pdf/publication/WP-2018-003.pdf>>; Oxfam, "An Economy that Works for Women: Achieving women's economic empowerment in an increasingly unequal world" (2017), available at: <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620195/bp-an-economy-that-works-for-women-020317-en.pdf;jsessionid=D54112CD3870B698C8C2925108958E7A?sequence=1>>.

**61** "Is India a Country or a Continent?", *The Economist* (2017), available at: <<https://www.economist.com/asia/2017/02/09/is-india-a-country-or-a-continent/>>; World Bank, "India's Poverty Profile" (May 2016), available at: <<http://www.worldbank.org/en/news/infographic/2016/05/27/india-s-poverty-profile/>>.

**62** Scheduled tribes or scheduled castes are officially recognized as historically disadvantaged groups in India. For more information: <[http://censusindia.gov.in/Census\\_And\\_You/scheduled\\_castes\\_and\\_scheduled\\_tribes.aspx](http://censusindia.gov.in/Census_And_You/scheduled_castes_and_scheduled_tribes.aspx)>.

**63** World Bank, "India's Poverty Profile" (May 2016), available at: <<http://www.worldbank.org/en/news/infographic/2016/05/27/india-s-poverty-profile/>>.

**64** *Ibid.*

**65** "Why India Needs Women to Work", *The Economist*, available at: <<https://www.economist.com/leaders/2018/07/05/why-india-needs-women-to-work/>>.

**66** *Ibid.*

**67** *Ibid.*

**68** *Ibid.*

from ineffective institutions of accountability and provide the poor with a route towards individual empowerment. A working theory of distributive justice must contend with the barriers that impede people's participation in social and economy activity, but it also must consider the terms of their participation.

The participation of women in the workplace provides a key example. In 2015, more than 47 million households were provided employment under the Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MGNREGA), a nationwide, centralized, social scheme developed to reduce poverty. More than half of the participants were women.<sup>69</sup> However, criticisms of MGNREGA suggest that women's participation in the programme is problematic when conditions surrounding their employment (such as ill-treatment by their supervisors, the need to balance childcare with employment or ostracization for their participation in public work programmes) result in women having little control over the terms of their participation or their economic situation.<sup>70</sup> Thus, a useful conception of distributive justice should consider whether individuals' participation in employment programmes and other economic initiatives leads to an increase in their overall agency and decision-making power.

### 3.1 Empowerment and Its Impact on Institutions

Empowerment as a sociopolitical concept emerged from feminist critiques of development discourses in the 1980s, which considered women exclusively or mainly as mothers, housewives, or reproducers.<sup>71</sup> These feminist critiques regard empowerment as a process for redefining the role and standing of women in development, in households, and in their communities.<sup>72</sup> Srilatha Batliwala envisages empowerment as a process that transforms relations of power between individuals or groups and re-evaluates how resources (including intellectual, economic, and political resources) are accessed, controlled, and distributed.<sup>73</sup> Linda Mayoux has argued that the process of empowerment depends on women

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<sup>69</sup> Diego Maiorano, Suruchi Thapar-Björkert and Hans Blomkvist, *The paradoxes of empowerment: gendering NREGA in the rural landscape of India*, 26 *Development in Practice* (2016), 127–134, at 130.

<sup>70</sup> *Ibid.*

<sup>71</sup> N. Kabeer, *Gender Equality and Women's Empowerment: A Critical Analysis of the Third Millennium Development Goal*, 13 *Gender and Development*, no. 1 (2005), 13–24.

<sup>72</sup> *Ibid.*

<sup>73</sup> S. Batliwala, *Women's Empowerment in South Asia: Concepts and Practices*. New Delhi: ASPBAE (1994).

having greater access to material and economic resources.<sup>74</sup> Such resources enable women to increase the overall welfare of those around them (nutrition, education for children) and to acquire the social mobility needed to form alliances and challenge problems such as exclusion or domestic abuse.<sup>75</sup> Empowerment discourse has since been expanded to also include the poor and other underrepresented groups.<sup>76</sup> The World Bank World Development Report (2000/01) included empowerment as a crucial element for poverty reduction and this has put the concept at the centre of development policy and discourse.<sup>77</sup>

Having established that empowerment is an essential part of development, we now turn to the question of how the process of empowerment can lead to institutional reform and long-term solutions to pressing development issues. For Gerard Roland, one factor that contributes to economic growth and development are the interactions between slow- and fast-moving institutions that give rise to institutional reconfiguration.<sup>78</sup> Roland regards political institutions as fast-moving institutions because they have potential for centralized changes in large, quick steps.<sup>79</sup> By contrast, cultural values and social norms are generally examples of slow-moving institutions, since they are ingrained in our collective conscience, operate tacitly, and gradually change over generations.<sup>80</sup> Despite changing at a slow, gradual pace, slow-moving institutions still exercise causal pressures on fast-moving institutions.<sup>81</sup> For example, when political institutions are out of step with social norms, there is an impetus for legislative or legal reform (i.e. the 2015 US Supreme Court ruling to legalize same-sex marriage nationwide).<sup>82</sup> This interaction between and slow- and fast-moving institutions demonstrates that institutional change is not only accomplished through formal, top-down approaches. Empowerment strategies such as human rights education employ community-based, participatory processes that contribute to law and

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74 L. Mayoux, *Tackling the Down Side: Social Capital, Women's Empowerment and Micro-Finance in Cameroon*, 32 *Development and Change*, no. 3 (2001), 435–464.

75 *Ibid.*

76 Diego Maiorano, Suruchi Thapar-Björkert and Hans Blomkvist, *The paradoxes of empowerment: gendering NREGA in the rural landscape of India*, 26 *Development in Practice* (2016), 127–134.

77 *Ibid.*, at 129.

78 Gérard, Roland. *Understanding Institutional Change: Fast-Moving and Slow-Moving Institutions*, 38 *Studies in Comparative International Development* (2004), 109–131.

79 *Ibid.*

80 *Ibid.*

81 *Ibid.*

82 Martha Minow, *Law and Social Change*, 62 *UMKC L. Rev.* 171 (1993); *Obergefell v. Hodges*, 576 U.S.

institutional reform through movements that have led to major political change, public interest litigations that lead to landmark rulings, or media campaigns that change society's perceptions on issues of national importance.<sup>83</sup>

We argue that a meaningful conception of distributive justice in the context of India must incorporate pathways for individual empowerment, given that empowerment of the marginalized is key to removing structural barriers which hinder equitable growth and development. The following sections will discuss how the aims of distributive justice have been exemplified in India's laws. By evaluating different conceptions of distributive justice through the lens of individual empowerment, we distil our baseline conception of distributive justice in the Indian context, in a manner that aligns with the SDG agenda.

### 3.2 Distributive Justice in India

Distributive justice is concerned with the distribution and allocation of common goods and common burdens.<sup>84</sup> These benefits and burdens span all dimensions of social life and assume all forms, including income, economic wealth, political power, taxation, work obligations, education, shelter, health care, military service, community involvement, and religious activities. Governments continuously make and change laws affecting the distribution of economic benefits and burdens in their societies. Almost all changes, from the standard tax and industry laws through to divorce laws have some distributive effect, and, as a result, different societies have different distributions.<sup>85</sup> Distributive justice arguments have been invoked in connection with minimum wage legislation, Affirmative Action policies, public education, military conscription, litigation,

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**83** Dani Banik, *Hague J Rule Law* (2009) 1: 117, available at: <<https://doi.org/10.1017/S1876404509001171>>; Laura Goodwin and Vivek Maru, "What Do We Know About Legal Empowerment?: Mapping the Evidence", *Namati Working Paper* (May 2014), available at: <<https://namati.org/wp-content/uploads/2014/05/Evidence-Review2.pdf/>>; Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, (Vol II: Working Group Reports, 2008), available at: <[http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone—vol-ii—english-only/making\\_the\\_law\\_work\\_II.pdf/](http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone—vol-ii—english-only/making_the_law_work_II.pdf/)>.

**84** Manu Mishra and Udit Malviya, *Distributive Justice and its Relevance in Contemporary Times*, available at: <<http://docs.manupatra.in/newslines/articles/Upload/5F79FD56-36E8-490F-A9D6-7DC60A0AD828.Paper.pdf/>>.

**85** "Distributive Justice", *Stanford Encyclopedia of Philosophy* (September 27, 2013), available at: <<http://plato.stanford.edu/entries/justicedistributive/>>.



as well as with redistributive policies such as welfare, Medicare, aid to the developing world, progressive income taxes, and inheritance taxes.<sup>86</sup>

One argument for integrating the notion of distributive justice into India's development strategy can be located within India's existing legal context.<sup>87</sup> India is a federation with a parliamentary system. It obtained independence as a nation state in 1947. Its legal system is largely based on the English common law, continuing the legacy of the British Raj. India's legal system is notably pluralistic. For example, in family law each religion adheres to its own specific laws. India's Constitution, which came into effect in 1950, is the lengthiest in the world. It prescribes, among other things, the federal and administrative structure, fundamental rights, and directive principles of state policy.<sup>88</sup>

Articles 142, 144 and the Fundamental Rights enshrined in Part III of the Constitution of India provide for a just and fair society and ensure distributive justice as was seen even before the enactment of the Constitution.<sup>89</sup> Many judgements originating from the Public Interest Litigation also strengthened the idea of distributive justice.<sup>90</sup> In addition, a number of cases over environmental issues that have been decided by the Supreme Court highlight its attitude to establishing "distributive justice" and "corrective justice." Whether it be the application of "Polluter Pays Principle"<sup>91</sup> or the "Public Trust Doctrine,"<sup>92</sup> the core idea behind these decisions is distributive and corrective justice. The debate that occurred in the case of *Maneka Gandhi v. Union of India*<sup>93</sup> on the concepts of "procedure established by law" and "due process of law" stems heavily from the concept of distributive justice. That case saw a complete shift in the attitude of

<sup>86</sup> *Distributive Justice* (September 28, 2013), <<http://myweb.lmu.edu/jkonow/Distributive%20Justice.pdf>>.

<sup>87</sup> Manu Mishra and Udit Malviya, *Distributive Justice and its Relevance in Contemporary Times*, available at: <<http://docs.manupatra.in/newsline/articles/Upload/5F79FD56-36E8-490F-A9D6-7DC60A0AD828.Paper.pdf>>; Rashmi Raman and Nisha Venkataraman, *Grafting Faith-Legal Aid Services in India*, 3rd International Conference on Therapeutic Jurisprudence (2006).

<sup>88</sup> Nandini Ramanujam, et al., *The Rule of Law and Economic Development: A Comparative Analysis of Approaches to Economic Development across the BRIC Countries* (Montreal: Rule of Law and Economic Development Research Group, 2012), p. 6, available at: <[www.mcgill.ca/roled/files/roled/mcgill\\_roled\\_report\\_2012.pdf](http://www.mcgill.ca/roled/files/roled/mcgill_roled_report_2012.pdf)>.

<sup>89</sup> In Re: Llewelyn Evans, AIR 1926 Bom 551; P.K. Tare v. Emperor, AIR 1943 Nagpur 26.

<sup>90</sup> Hussain Ara vs State of Bihar, AIR 1979 SC 1360; M.C. Mehta Vs Union of India, AIR 1988 SC 1037.

<sup>91</sup> M.C. Mehta v. UOI, AIR 1987 SC 1086; Indian Council for Enviro-Legal Action v. UOI (1996) 3 SCC 212; Vellore Citizen's Welfare Forum v. UOI (1996) 5 SCC 647; Rio Declaration, Principle 16, 1992.

<sup>92</sup> M.C. Mehta v. Kamalnath (1997) 1 SCC (736); K.M. Chinappa v. UOI, AIR 2003 SC 724.

<sup>93</sup> AIR 1978 SC 597: (1978) 1 SCC 248.

the judiciary that even if there is some procedure that has been established by some statute passed by the legislature, the justice will still be done keeping in mind the “due process of law.”<sup>94</sup> The law declared by the Supreme Court is binding on all the courts. It also provides that Supreme Court is not bound by its own decisions and may reverse its own decision.<sup>95</sup> Thus, where the question of public good comes and fairness<sup>96</sup> is to be seen, or the need of distribution of the rights and responsibilities comes, the Supreme Court has always been in favour of the public, or rather, the public good. However, recent trends in undermining the independence of institutions such as the Supreme Court are perturbing and erode democratic norms.<sup>97</sup>

### 3.3 Conceptions of Distributive Justice

Conceptions of distributive justice are concerned with defining what is meant by equal or fair distributions of resources or public goods. The following critically examines prominent existing conceptions of distributive justice to define a baseline theory of distributive justice that advances individual empowerment, among other factors that are critical to achieving the SDGs in India.

#### 3.3.1 Utilitarianism

Utilitarianism evaluates the quality of life of a society by measuring utility across individuals, where utility has been variably conceptualized as “well-being,” “happiness,”<sup>98</sup> and “welfare.”<sup>99</sup> Economists adopted the concept of utility because it measures quality of life according to people’s reported

<sup>94</sup> AIR 1950 SC 27.

<sup>95</sup> Constitution of India, Article 141; I.C. Golaknath v. State of Punjab, AIR 1967 SC 164; His Holiness Keshvananda Bharati v. State of Kerela, AIR 1973 SC 1461; S.P. Gupta v. Union of India 1981 Supp SCC 87.

<sup>96</sup> International Covenant on Civil & Political Rights, Article 14, 1966.

<sup>97</sup> “Proposed RTI changes aimed at usurping power from Parliament”, The Times of India, available at: <[http://timesofindia.indiatimes.com/articleshow/65093480.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst/](http://timesofindia.indiatimes.com/articleshow/65093480.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst/)>; Jatin Ghandi, “Supreme Court judges vs CJIDipak Misra: The cases behind the controversy” Hindustantimes, available at: <<https://www.hindustantimes.com/india-news/supreme-court-judges-take-on-cji-dipak-misra-what-led-to-the-unprecedented-standoff/story-34c3LTn9WF5ByfdMYByoCI.html/>>.

<sup>98</sup> John S. Mill, *Utilitarianism* (London: Fraser’s Magazine, 1861).

<sup>99</sup> R. Arneson, *Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare*, 19 *Philosophy and Public Affairs*, (1990), 158–194.

feelings about their lives, which is something that cannot be understood through GDP or per capita income or spending.<sup>100</sup> As such, it provides a metric for assigning a proper value to wealth and income, which for the utilitarian, is only valuable insofar as it maximizes utility across individuals over the course of their lives.<sup>101</sup>

Utilitarianism is seen as an improvement from GDP measurements because it is concerned with what wealth and income actually do for humans. However, there are compelling criticisms of the theory that demonstrate why it is not an adequate redistributive model for the achievement of SDGs or for promoting individual empowerment. While utilitarians are concerned with the overall well-being of society as opposed to the mere accumulation or averaging of wealth, utilitarianism is ultimately concerned with well-being as an aggregated measure. A country could fulfil the moral requirement of utilitarianism by achieving growing levels of aggregate well-being or utility at the serious expense of a few. This shows us that it is conceivable that in pursuing outcomes that maximize aggregate utility, we may neglect the SDGs by overlooking the moral importance and rights of others. For these reasons, utilitarianism is inadequate for furthering individual agency and empowerment.

Another criticism to consider is that terms such as “well-being or “welfare” reduce people’s needs and values into a single, all-purpose metric.<sup>102</sup> Humans have different values and needs that are informed by their interests, aspirations, priorities, physical, and mental dimensions. Measuring utility across individuals suggests that needs, activities, or interests are commensurable and can be ranked. However, it seems unintelligible to quantify or qualitatively compare the well-being derived from, say, eating at your favourite restaurant to the satisfaction gained from attending an engaging lecture. Utilitarianism attempts to provide an elegant and simple way to measure the well-being of societies but fails to capture the plurality and dimensions of human needs, values, aspirations, and interests.<sup>103</sup>

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**100** *Report by the Commission on the Measurement of Economic Performance and Social Progress*, available at: <<http://ec.europa.eu/eurostat/documents/118025/118123/Fitoussi+Commission+report/>>; R. Dworkin, *What is Equality? Part 1: Equality of Resources*, 10 *Philosophy and Public Affairs*, 185–246, at 189.

**101** D. Parfit, *Reasons and Persons* (Oxford University Press, 1984), p. Appendix I.

**102** Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011), pp. 105–106.

**103** *Ibid.*, at 106.

### 3.3.2 Resource-Based Theories

Resource-based theories require that resources are redistributed in a manner that grants individuals equal or approximately equal shares. Resources are generally conceptualized as wealth and income; for instance, Martha Nussbaum has dubbed equality of resources “the egalitarian version of the GDP approach.”<sup>104</sup> However, Ronald Dworkin, a major proponent of the theory, views resources as a broader category. For him, resources include a person’s physical and mental attributes, including their talents and deficiencies.<sup>105</sup>

Martha Nussbaum argues that equality of resources fails as a theory of distributive justice because it does not account for the fact that people require different levels of resources to achieve similar opportunities for advantage. In *Creating Capabilities*, Nussbaum writes:

People have differing needs for resources if they are to attain a similar level of functioning, and they also have different abilities to convert resources into functionings ... a child needs more protein than an adult for healthy physical functioning, and a pregnant or lactating woman needs more nutrients than a nonpregnant woman.<sup>106</sup>

Nussbaum’s criticism applies to resource-based theories that simply equate resources to wealth and income. Dworkin’s version of the theory, however, can take into account the physical differences of a child or pregnant woman, since he considers these differences to be part of a person’s resources.

That said, Dworkin’s conception may overlook inequalities that do not have their basis in unequal resource distributions. Nussbaum provides the example of the unequal position of men and women with respect to educational opportunities in societies that devalue female education.<sup>107</sup> This form of disadvantage is based in social inequalities, and Dworkin’s theory would likely not get to the root of this issue. The same could be said for securing fundamental freedoms (freedom of speech, religion, association), which would not be achieved by the mere redistribution of resources. Amartya Sen argues that resourcism is a deficient theory because it “takes goods to be embodiment of advantage, rather than taking advantage to be *relationship* between persons and goods.”<sup>108</sup> In his

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<sup>104</sup> *Ibid.*, at 113.

<sup>105</sup> See Dworkin, Ronald, 1981, *What is Equality? Part 1: Equality of Resources*, 10 *Philosophy and Public Affairs*, 185–246.

<sup>106</sup> Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011), p. 114.

<sup>107</sup> *Ibid.*, at 115.

<sup>108</sup> Amartya Sen, *Equality of What?*, The Tanner Lecture on Human Value (1979) 197–220, at 216.

view, the resource theorist is guilty of fetishizing goods and neglecting to consider “what goods do for persons” and “what persons can do with goods.”<sup>109</sup>

Resource-based theories do not promote individual empowerment in principle because they do not consider how these resources actually improve people’s lives or allow them to achieve their ends. Moreover, focusing solely on redistribution of resources does not directly address the barriers that cause unequal distributions and impede underrepresented groups from seeking material and social resources on their own terms.

### 3.3.3 The Capabilities Approach

The capabilities approach begins its inquiry by focusing on the reality of peoples’ lives before designing a principle of redistribution. The approach asks, “What are people actually able to do and to be?” and “What real opportunities are available to them?”<sup>110</sup> From this point of inquiry, the capabilities approach conceptualizes a person’s power or freedom to shape their lives in terms of their capabilities, or “real opportunities to do and be what they have reason to value.”<sup>111</sup> According to Sen, in evaluating social welfare, capabilities – and not income, or utility, or even rights – should be equalized.<sup>112</sup> In other words, the theory posits that capabilities – the various beings and doings a person has reason to value – should be taken used to assess any policy or practice.<sup>113</sup>

The capabilities approach to development places moral importance on the process of (i) enhancing a person’s set of basic capabilities that are important to a dignified human life (control over one’s health, environment), and (ii) granting individuals the freedom to make what they want out of this set of basic capabilities.<sup>114</sup> As echoed in this process, the capabilities approach recognizes the intrinsic importance that individual agency and empowerment has on one’s

<sup>109</sup> Gerald A. Cohen, *On the Currency of Egalitarian Justice*, 99 *Ethics* (1989), 906–944, at 943–944.

<sup>110</sup> Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011), pp. 51–52.

<sup>111</sup> Ingrid Robeyns, *The Capability Approach*, Stanford Encyclopedia of Philosophy (April 8, 2017), available at: <<https://plato.stanford.edu/entries/capability-approach/>>.

<sup>112</sup> Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999).

<sup>113</sup> *Ibid.*

<sup>114</sup> Sandra Tinajero and Giulia Sinatti, *Migration for Development: A Bottom-Up Approach*, Joint Migration and Development Initiative, p. 22.

quality of life.<sup>115</sup> In contrast with utilitarianism, the capabilities approach is pluralistic about value and understands peoples' set of capabilities as being different across dimensions. Moreover, the capabilities approach is concerned with the non-economic barriers that perpetuate injustice and inequality (social, physical, environmental, attitudinal), which are left unaddressed by the resource theorist.

### 3.3.4 Criticisms of Existing Distributive Justice Conceptions

Elizabeth Anderson has criticized the debates in distributive justice for focusing too heavily on the distribution of individual shares.<sup>116</sup> On Anderson's view, promoting individual empowerment is not merely about redistributing shares to individuals based on competing principles. Rather, it is about promoting and supporting a social arrangement that empowers people to participate in formal (the political process) and informal institutions (one's culture) as equals in this greater sense. Equality of resources fails to achieve relational equality because it cannot adequately address discrimination and other social barriers that might impede individuals from relating to one another as equals. Utilitarianism also fails because it can treat some individuals as mere means for the maximization of aggregate utility. By contrast, the capabilities approach can adequately address Anderson's challenge. Nussbaum considers "affiliation," which is conceptually similar to relational equality, as an essential capability that makes "life worthy of human dignity."<sup>117</sup> Affiliation, like relational equality, captures the social foundations for engaging in equal relations with others (respect, non-discrimination, reciprocity), and also promotes institutions that are critical for fostering an environment where individuals have equal rights and duties.<sup>118</sup> Anderson calls attention to the point that the concept of

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**115** Mathias Risse, *Human Development Research Paper 2009/34: Immigration, Ethics and Capabilities Approach*. (UNDP, 2009), pp. 2–3.

**116** Elizabeth Anderson, *What Is the Point of Equality?* *Ethics* (1999), 314–16; Iris M. Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

**117** Martha Nussbaum, *Chapter 14: Human Dignity and Political Entitlements*, (April 10, 2017), available at: <[https://bioethicsarchive.georgetown.edu/pcbe/reports/human\\_dignity/chapter14.html](https://bioethicsarchive.georgetown.edu/pcbe/reports/human_dignity/chapter14.html)>.

**118** Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011), pp. 33–34.

empowerment should not be seen as only addressing individual concerns. Empowering individuals might also involve promoting an individual's power and opportunities to associate with others to promote a group cause (labour unions, fostering solidarity for political causes).

However, there are criticisms that specifically target the capabilities approach. A major criticism of Sen's capabilities approach is that it is under-theorized, and that is not a theory of justice that can guide distributive models for society. Critics such as Thomas Pogge argue that Sen fails to specify which capabilities are central to his theory and how they ought to be distributed. As mentioned, the concept of capabilities is informed by asking "what are people actually able to do and to be?" and "what real opportunities are available to them?" Without a defined set of capabilities, it becomes unclear as to what goals or principles guide distributions, or how we define or measure the progress of a society.<sup>119</sup> Nussbaum does provide a justified list of ten capabilities, which find their basis in her reading of Aristotle, and have been theorized through cross-cultural discussions and exchanges. However, some theorists have criticized her approach's cross-cultural applicability, noting that her list of capabilities remains largely unchanged from the list inspired by her reading of Aristotle.<sup>120</sup>

Despite these criticisms, we argue that the capabilities approach is still the most suitable framework to examine the relationship between institutions and distributive justice in India. The arguments launched against Nussbaum are a general criticism of her set of central capabilities. However, some central capabilities such as bodily health or education are of special moral import, because they are universal capabilities that enable individuals to secure other capabilities.<sup>121</sup> Thus, we find that despite the criticisms regarding the universality of Nussbaum's entire list of capabilities, the capabilities approach is a suitable lens to examine growth-oriented reforms and distributive justice in India in the areas of health and education.

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**119** Thomas Pogge, *Can the Capability Approach Be Justified?*, 30 *Philosophical Topic*, no. 2 (2002), 167–228.

**120** Susan Moller Okin, *Poverty, Well-Being, and Gender: What Counts, Who's Heard?*, 31 *Philosophy and Public Affairs*, no. 3 (2003), 280–316; Frances Stewart, *Book Review: Women and Human Development: The Capabilities Approach*, by Martha Nussbaum, 13 *Journal of International Development*, no. 8 (2001), 1191–1192.

**121** Christopher Riddle, *The Disability Approach in Practice* (Lanham: Lexington Books / Rowman & Littlefield, 2014).



## 4 Institutional Reform, the Baseline Conception and the 2030 Agenda

This part analyses the relationship between growth-oriented reforms in India, distributive justice and the SDG agenda. It then discusses the concrete efforts and institutional changes being undertaken by India to commit to distributive justice and improve outcomes under Agenda 2030. It examines how institutional reform and distributive justice will play an integral role in India's ability to attain the SDGs. We argue that, in India, economic reforms must involve institutional reform with a commitment to inclusive development and distributive justice. We discuss the weaknesses that are currently present in institutions in India and present ways in which such institutions can be strengthened, so that they may serve as enforcement mechanisms with the broader aim of moving towards greater distributive justice. Distributive justice can empower citizens, and an empowered citizenry is important for strengthening institutional accountability and responsiveness. For these reason, there is a need to improve governance mechanisms in response to corruption, poverty, and inequality in India.

### 4.1 Institutions and Distributive Justice

In order for India to follow through on its credible commitment to achieving the SDGs and achieve substantial improvement in human development indicators, it must make strategic interventions both to empower individuals and improve the quality of its institutions of accountability. In this article, we adopt a definition of institutions as a set of rules, compliance, procedures, and norms that are “designed to constrain the behaviour of individuals in the interests of maximizing the wealth or utility of principals.”<sup>122</sup>

“Genuine” growth requires changes in growth determinants such as investment, export diversification, and productivity. With the exception of some oil economies in the Middle East, most countries that have grown at 4.5 per capita per year over three decades have accomplished this sustained growth through

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<sup>122</sup> Douglass North, *Structure and Change in Economic History* (New York: Norton, 1981), pp. 201–2; see for comparison Edward L Glaeser, et al., *Do Institutions Cause Growth?*, 3 *Journal of Economic Growth*, no. 9 (2004). The authors argue that property rights do not constrain actors, they result from other institutions or policy choices.

diversification into manufacturing.<sup>123</sup> Economies dependent upon commodity exports may experience growth, but specialization in a few highly profitable primary activities tends not to raise productivity in terms of employment.<sup>124</sup> India demonstrates that it is possible to generate growth in tradable services, but that this approach can accomplish only limited structural change, since reliance on education and skills generates too few jobs for the unskilled workforce with which it will remain endowed for a considerable time.<sup>125</sup> If manufacturing and modern services are growth drivers, markets need to work reasonably well in order to attract entrepreneurs, firms, capital, and employment.

Creating functioning market economies requires more than simply a focus on market creating and market sustaining institutions. Equally critical are effective regulatory frameworks and distributive mechanism to equitable share the spoils of growth.<sup>126</sup> In addition, deeper institutional transformation ought to be measured in decades, not years. Laws and regulations can be rewritten<sup>127</sup> relatively quickly, but it is a country's institutions that establish the rules of the game, because they are "cognitive constructs that shape expectations about how other people behave."<sup>128</sup> Such expectations are difficult to modify and replace. Moreover, where the beneficiaries of the established order remain politically strong, they can easily undermine reforms that impinge upon their privilege. Sustainable economic growth ultimately requires political change and inclusive institutions.<sup>129</sup> Correspondingly, framing potential growth in terms of investment climate, investors "may need to look deeper under the surface of the macro

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<sup>123</sup> Dani Rodrik, *The Future of Economic Convergence*, NBER Working Paper no. 17400 (2011), p. 6.

<sup>124</sup> Margaret S. Mcmillan and Dani Rodrik, *Globalization, Structural Change and Productivity Growth*, NBER Working Paper No. 17143 (National Bureau of Economic Research, 2011).

<sup>125</sup> Barry Bosworth et al., *Sources of Growth in the Indian Economy*, NBER Working Paper No 12901 (National Bureau of Economic Research, 2007).

<sup>126</sup> Dani Rodrik and Arvind Subramanian, *The Primacy of Institutions (and what this does and does not mean)*, 40 *Finance and Development*, no. 2 (2003), available at: <<https://www.imf.org/external/pubs/ft/fandd/2003/06/pdf/rodrik.pdf>>.

<sup>127</sup> Arvind Subramanian, 'India's Path from Crony Socialism to Stigmatized Capitalism' Project Syndicate (2018), available at: <<https://www.project-syndicate.org/commentary/india-cronyism-to-capitalism-by-arvind-subramanian-2018-02?barrier=accesspay/>>.

<sup>128</sup> Dani Rodrik, *The Future of Economic Convergence*, NBER Working Paper no 17400 (2011), p. 34; See also Douglass North, *Institutions, Institutional Change, and Economic Performance* (New York: Cambridge University Press, 1990); Katharina Pistor, *The Standardization of Law and Its Effect on Developing Economies*, 50 *The American Journal of Comparative Law*, no. 1 (2002).

<sup>129</sup> Daron Acemoglu and James Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (New York: Crown Business, 2012).

landscape and discriminate more if they are to earn above-average returns from understanding this dynamic.”<sup>130</sup>

Institutions play a more significant role in the development outcomes of states than many other factors.<sup>131</sup> Rodrik, Subramanian and Trebbi, for example, examined the respective contributions of institutions, geography, and international trade (trade openness) to explain the difference in per capita GDP between rich and poor countries.<sup>132</sup> Controlling for institutions, they found that geography has at best a weak direct effect on incomes, although it has a strong indirect effect through institutions by influencing their quality.<sup>133</sup> Similarly, once institutions are controlled for, trade is almost always insignificant, although it too has a positive effect on institutional quality.<sup>134</sup> Their results demonstrate that the quality of institutions overrides other relevant factors.

The prevailing institutional framework in any society consists of formal and informal institutions. The term “institutions” refers to the formal and informal rules that govern economic activity, such as legal regulations, rights and freedoms, and infrastructure.<sup>135</sup> Institutions, in other words, are the legal, administrative, and customary arrangements for human interaction. In a world of incomplete knowledge and ambiguity, formal and informal institutions work together to facilitate the exchange of information through predictable human behaviour.<sup>136</sup>

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**130** Dominic Wilson, et al., *The BRICs 10Years On: Halfway Through The Great Transformation*, Global Economics paper no. 208 (Goldman Sachs Global Economics, Commodities and Strategy Research, 2011).

**131** Daron Acemoglu and James A Robinson, *Why Nations Fail: the Origins of Power, Prosperity and Poverty* (New York: Crown Business, 2012).

**132** Dani Rodrik, et al., *Institutions Rule: the Primacy of Institutions over Geography and Integration in Economic Development*, NBER Working Paper, no. 9305 (2002).

**133** Jared M. Diamond, *Guns, Germs, and Steel: the Fates of Human Societies* (New York: Norton, 2005); John Gallup, et al., “Geography and Economic Development”, NBER Working Paper No 6846 (1998); Jeffrey D. Sachs, “Tropical Underdevelopment”, NBER Working Paper No W8119 (2001).

**134** Jeffrey A. Frankel and David Romer, *Does Trade Cause Growth?*, 89 *The American Economic Review*, no. 3 (1999); Jeffrey D. Sachs, et al., “Economic Reform and the Process of Global Integration” *Brookings Papers on Economic Activity*, no. 1 (1995): Sachs emphasizes the role of international trade as a driver of productivity change and fostering economic convergence across countries.

**135** Mark Casson, et al., *Formal and Informal Institutions and Development*, 38 *World Development*, no. 2 (2010), 137.

**136** Svetozar Pejovich, *The Effects of the Interaction of Formal and Informal Institutions on Social Stability and Economic Development*, 2:2 *Journal of Markets & Morality* no. 164 (1999), 165.

## 4.2 India's Progress Towards the MDGs

India has made a substantial improvement in some of the metrics used to measure MDG attainment. This part examines some of the schemes and policies adopted by the Indian government as part of this effort. It suggests that India's plans to achieve the MDGs have faltered because reforms designed to alleviate poverty and achieve equitable growth have not addressed weaknesses in institutions of accountability.

### 4.2.1 The Mahatma Gandhi National Rural Employment Guarantee Act 2005

The MGNREGA<sup>137</sup> is a nationwide, centralized, social scheme developed to reduce poverty.<sup>138</sup> The scheme promises adult members of rural households with 100 days of guaranteed employment per year at the statutory minimum wage rate of the state.<sup>139</sup> If the government is unable to provide a qualified applicant with a job in 15 days, the applicant would receive unemployment insurance. The scheme aims to provide rural households with additional employment, while also facilitating the empowerment of women through financial inclusion, promoting their autonomy and strengthening the level of civic participation.<sup>140</sup>

In many ways, the MGNREGA had a significant impact on labour relations. It has provided labourers with high levels of bargaining power and agency, thereby influencing labour relations in ways that are advantageous to marginalized workers. This is evident even in instances where the MGNREGA wage limits were lower than those provided through private employers.<sup>141</sup>

However, the scheme failed to confront the social and economic realities of India. In particular, it did not adequately address the needs of the most vulnerable. Women, for example, have complained of facing several barriers to successful economic participation. This included restrictions on the type of work available, cases of ill-treatment by supervisors and complaints about certain

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<sup>137</sup> The MGNREGA was initially implemented as the National Rural Employment Guarantee Act (NREGA) in February, 2006.

<sup>138</sup> Rhonda Breitzkreuz, Carley-Jane Stanton, Nurmaiya Brady and John Pattison-Williams, *The Mahatma Gandhi National Rural Employment Guarantee Scheme: A Policy Solution to Rural Poverty in India*, 35 Development Policy Review, no. 3 (2017) 398.

<sup>139</sup> *Ibid.*, at p. 397.

<sup>140</sup> *Ibid.*, at p. 398.

<sup>141</sup> *Ibid.*, at p. 409.

jobs being too strenuous for them.<sup>142</sup> A major barrier stemmed from a poor understanding of childcare responsibilities. Many women complained of balancing childcare with employment or having a lack of child care options available to them during employment hours.<sup>143</sup>

Breitkreuz argues that the MGNREGA system works in providing short-term opportunities to Indian citizens but is unlikely to provide significant and inclusive long-term benefits. The schemes lack the transformative potential to benefit India's most disadvantaged groups. Instead, more of a focus should be placed on creating meaningful choices for marginalized groups<sup>144</sup> – an argument that is derived from the capabilities approach. However, as echoed in Pogge's criticisms in Section 3.3.4, capability theorists have been unable to adequately explain how their approach will be operationalized in practice. On this note, further efforts should go towards recognizing the social processes and structures central to the realization of meaningful choice.<sup>145</sup> The MGNREGA could, for example, enhance rural livelihoods and community development by creating flexible employment options such as higher wages coupled with more days of work, or creating more realistic labour options for women that build on the skills women already have.<sup>146</sup> Women's self-help groups also showed strong indications of being transformative for women through fostering solidarity and developing assets.<sup>147</sup> These measures would contribute to a more targeted and transformative change.

#### 4.2.2 Twenty-Point Programme (TPP)

The TPP was first launched by the government of India in 1975 and has been in existence since.<sup>148</sup> The scheme underwent significant reform in 2006, but still

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<sup>142</sup> *Ibid.*, at p. 411.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*, at p. 414.

<sup>145</sup> Chimni Bhupinder, *The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels*, 1:1 *The Law and Development Review*, Vol 2 (2008), p. 8.

<sup>146</sup> Rhonda Breitkreuz, Carley-Jane Stanton, Nurmaiya Brady and John Pattison-Williams, *The Mahatma Gandhi National Rural Employment Guarantee Scheme: A Policy Solution to Rural Poverty in India*, 35 *Development Policy Review*, no. 3 (2017), 414.

<sup>147</sup> *Ibid.*, at p. 414.

<sup>148</sup> Report by the Government of India, Ministry of Statistics and Programme Implementation, *Twenty-Point Programme* (2006), available at: <[http://mospi.nic.in/sites/default/files/twenty\\_point\\_programme\\_2006/tpp\\_2006a\\_background/A\\_%20Brief\\_Description\\_TPP\\_2006\\_14may15.pdf?status=1&menu\\_id=162/](http://mospi.nic.in/sites/default/files/twenty_point_programme_2006/tpp_2006a_background/A_%20Brief_Description_TPP_2006_14may15.pdf?status=1&menu_id=162/)>.

maintains its two central goals, being the eradication of poverty and an improvement in the quality of life for the common man of India.<sup>149</sup> It is a scheme built of 20 points including the eradication of poverty, providing clean drinking water, ensuring that health and education is accessible for all, and improving India's slums.<sup>150</sup>

The TPP is expected to go through another stage of restructuring,<sup>151</sup> this time reflecting more recent human development-related priorities, such as sanitation. The revised TPP is aimed at ensuring that the post-2015 SDGs would be engrained in the framework.

#### 4.2.3 The Targeted Public Distribution System (TPDS) and the National Food Security Act (NFSA)

The TPDS is one of India's food security interventions. The system provides subsidized essential commodities, such as wheat, rice, sugar, edible oils, and kerosene, through a network of shops that sell the goods at below market prices.<sup>152</sup> The system initially began in the late 1970s and was mainly restricted to urban areas and food deficit regions. Rural areas were later covered by the scheme in the 1980s.<sup>153</sup>

The TPDS forms much of the backbone of the NFSA, which was signed into law in September 2013. The Act addresses the issue of food security by assuring the availability of sufficient food grains at affordable prices, while also making a shift from the welfare system approach to a rights-based approach.<sup>154</sup>

<sup>149</sup> V.S. Elizabeth, *Distributive Justice – Poverty and Economic Development*, 28 Penn State International Law Review, no. 3 (2010), 472.

<sup>150</sup> Report by Government of India, Ministry of Statistics and Programme Implementation, *Point/Items of TPP-2006*, available at: <[http://mospi.nic.in/sites/default/files/twenty\\_point\\_programme\\_2006/point\\_Items\\_of\\_tpp\\_2006/PointsitemsTPP2006.pdf?status=1&menu\\_id=166?status=1&menu\\_id=162/](http://mospi.nic.in/sites/default/files/twenty_point_programme_2006/point_Items_of_tpp_2006/PointsitemsTPP2006.pdf?status=1&menu_id=166?status=1&menu_id=162/)>.

<sup>151</sup> Nidhi Sharma, *Modi Government set to revamp Indira Gandhi's poverty eradication Twenty Point Programme*, The Economic Times (2015), available at: <<https://economictimes.indiatimes.com/news/politics-and-nation/modi-government-set-to-revamp-indira-gandhis-poverty-eradication-twenty-point-programme/articleshow/49681677.cms/>>.

<sup>152</sup> Reetika Khera, *India's Public Distribution System. Utilisation and Impact*, 47 The Journal of Development Studies, no. 7 (2011), 1038; S. Mahendra Dev, *Public Distribution System: Impact on Poor and Options for Reform*, 33 Economic and Political Weekly, no. 35 (1998), 2285.

<sup>153</sup> S. Mahendra Dev, *Public Distribution System: Impact on Poor and Options for Reform*, 33 Economic and Political Weekly, no. 35 (1998), 2285.

<sup>154</sup> Priyam Sengupta and Kakali Mukhopadhyay, *Economic and Environmental Impact of the National Food Security Act of India*, 4 Agricultural and Food Economics, no. 5 (2016), 3.

A study conducted in Rajasthan exposed a number of weakness underpinning the TPDS scheme. One such criticism discussed the limited accessibility of the scheme, where only about one-third of the below poverty line households in Rajasthan received access to the TPDS.<sup>155</sup> Khera argues that the low rate of accessibility to the TPDS is due to conceptual problems, such as the use of a uniform criteria for the entire country and holding a static view of a household's economic status.<sup>156</sup> Evidence of corruption were also found, where the amount bought from consumers did not align to the amount supplied by the central government.<sup>157</sup> Furthermore, concerns have revolved around the feasibility of the NFSA due to its lack of effective enforcement mechanisms.<sup>158</sup>

#### 4.2.4 The Aadhaar Biometric Identity System

The Aadhaar platform is an innovative system that forms one of the key pillars of “Digital India.” It is designed as a unique 12-digit identity number issued to all residents in India and is governed and monitored by the Unique Identification Authority of India, a branch of the Indian government. It is designed as a strategic policy tool to support social and financial inclusion, public sector delivery reforms and to promote convenience and people-centric governance.<sup>159</sup>

On the face of it, the Aadhaar system can be seen as a tool of distributive justice and equality, as it was designed as a means for poorer residents to access government services. In 2012, a pilot project was initiated in Jharkhand, where the Aadhaar system was used to make payments of wages under the National Rural Employment Guarantee Act (NREGA). At the onset of the pilot project, the response seemed to be of a general satisfaction with the timely and reliable payments of wages, and an overall preference to Aadhaar, rather than the ad hoc, and often delayed payments made otherwise.<sup>160</sup> However, the system has begun receiving criticism for its

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<sup>155</sup> Reetika Khera, *India's Public Distribution System. Utilisation and Impact*, 47 *The Journal of Development Studies*, no. 7 (2011), 1060.

<sup>156</sup> *Ibid.*, at pp. 157-160.

<sup>157</sup> *Ibid.*, at p. 1054.

<sup>158</sup> Priyam Sengupta and Kakali Mukhopadhyay, *Economic and Environmental Impact of the National Food Security Act of India*, 4 *Agricultural and Food Economics*, no.5 (2016), 18.

<sup>159</sup> Government of India, Unique Identification Authority of India, *About Aadhaar*, available at: <<https://www.uidai.gov.in/your-aadhaar/about-aadhaar.html/>>.

<sup>160</sup> Bharat Bhatti, *Aadhaar – Enable Payments for the NREGA workers*, 47 *Economic and Political Weekly*, no. 49 (2012), 19, available at: <[https://www.jstor.org/stable/41720432?seq=3#page\\_scan\\_tab\\_contents/](https://www.jstor.org/stable/41720432?seq=3#page_scan_tab_contents/)>.



inability to adapt to the contextual and technological realities in India, particularly for those in rural or disadvantaged settings. Many users are unable to link their cards to the subsidized food rations or pension schemes they are entitled to.<sup>161</sup> In turn, skepticism has surrounded Aadhaar given its inability to meet its fundamental goals of tackling benefit fraud and poverty.

#### 4.2.5 The National e-Governance Plan

In 2006, the Indian government approved the National e-Governance Plan, with the aim of establishing several e-governance initiatives to improve and simplify the delivery of government services.<sup>162</sup> The initiatives are extensive, covering sectors from immigration to pension schemes to education and health, and comprise of responsibilities at both a state and central level. Current projects include initiatives to computerize government departments, to initiatives that target the finer points of administration, such as improving transparency, or creating a large-scale digitized record system.<sup>163</sup>

At this point, it could be argued that there is a design-reality gap in the e-governance system, and that issues of e-readiness and accessibility are of great concern for India. India has not shown encouraging performance with broadband services, bandwidth availability, and network coverage.<sup>164</sup> Adding to this issue is that people living in rural communities have yet to gain direct access to these services.<sup>165</sup> This suggests that a more inclusive strategy is needed to ensure all stakeholders benefit equally from e-governance initiatives.

#### 4.2.6 The Right to Information (RTI) Act

India implemented the RIT Act 2005 as a mechanism to tame corruption. The law allows citizens to make an application to seek information kept by public

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<sup>161</sup> Soutik Biswas, “Aadhaar: Is India’s biometric ID scheme hurting the poor”, BBC News (2018), available at: <<https://www.bbc.com/news/world-asia-india-43207964>>.

<sup>162</sup> Government of India, Ministry of Electronics and Information Technology, *National e-Governance Plan*, available at: <<http://meity.gov.in/divisions/national-e-governance-plan/>>.

<sup>163</sup> *Ibid.*

<sup>164</sup> Harekrishna Misra, ‘E-governance and millennium development goals: Sustainable development in rural india.’ Conference paper for the 6th International Conference on the Theory and Practice of Electronic Governance (2012), p. 9.

<sup>165</sup> *Ibid.*

authorities. It is aimed at promoting transparency and accountability and adopts the rights-based approach to development. A decade-long experience of the RTI act has shown a great deal of success with several applications being made to correct the faults of rampant corruption, particularly with the delivery of development programmes such as the MGNREGA.<sup>166</sup> The government has also made a remarkable effort in publicizing the RTI Act and its benefits. On one hand, RTI act has ushered in an era of “culture of transparency” and has empowered citizens, while on the other hand, it remains vulnerable to efforts by the government to undermine its potential.<sup>167</sup> In order to improve the current system, more efforts are needed to provide user-guides and procedural details of the RTI process, as well as to develop an effective monitoring mechanism.<sup>168</sup>

### 4.3 The Baseline Conception of Distributive Justice and the Achievement of the SDGs

In this section, we posit that the SDGs present a greater opportunity for states to attain the baseline conception of distributive justice than the MDGs. This is because the SDGs have created targets that incorporate distributive justice as an aim and include discussions on the best principles to guide the distribution of development costs and benefits among populations and individuals. Our baseline conception of justice, which is based on the capabilities approach, recognizes the intrinsic importance of agency and empowerment on one's quality of life and defines a set of basic capabilities that are important to a dignified human life, whether it be bodily health or control over one's environment.<sup>169</sup> The SDGs, as envisioned through our baseline conception of distributive justice, has transformed the basic set of capabilities into political commitments.

However, moving forward, India faces a number of specific challenges to attaining the SDGs, some of them shared with other states and others unique to its specific context.

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**166** B.S. Ghuman and Mohammad Sohail, *Right to Information Act: 2005 in India: A Decadal Experience*, 62 *Indian Journal of Public Administration*, no. 2 (2017), 238.

**167** Vidya Venkat, “10years after RIT, transparency under cloud” *The Hindu* (May 16, 2015), available at: <<https://www.thehindu.com/news/cities/Delhi/10-years-after-rti-transparency-under-cloud/article7213480.ece/>>; Yasin Khan, “A critique of Right to Information Act” (October 12, 2012).

**168** *Ibid.*, at p. 247.

**169** Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011), pp. 33–34.

Firstly, the realization of key goals will require a significant and sustained financial commitment.<sup>170</sup> The rough calculations have put the cost of providing a social safety net to eradicate extreme poverty at about \$66 billion a year,<sup>171</sup> while annual investments in improving infrastructure (water, agriculture, transport, and power) could be up to a total of \$7 trillion globally. A major conference on financing for the SDGs, held in the Ethiopian capital Addis Ababa in 2015, failed to ease concerns that there will not be enough funds to meet the aspirational nature of the goals.<sup>172</sup> It included a recommitment to the UN target on aid spending 0.7% of gross national income (GNI) set more than 40 years ago. Multilateral banks have committed \$400 billion.<sup>173,174</sup>

Secondly, India will need to decide how progress towards the SDGs will be measured.<sup>175</sup> A number of targets in the SDGs are not quantified. The indicators for measuring progress have not yet been identified. Even if they are limited to two indicators per target, there will be 338 indicators to monitor and report. As one observer put it, “[h]aving 169 targets is like having no targets at all.”<sup>176</sup> Measurability will depend on the availability of data and the capacity to measure them.<sup>177</sup>

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**170** Sanjiv Kumar, Neeta Kumar, Saxena Vivekadhish, *Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs): Addressing Unfinished Agenda and Strengthening Sustainable Development and Partnership*, 41 *Indian J Community Med*, no. 1 (2016), available at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>>.

**171** Report of the Intergovernmental Committee of Experts on Sustainable Development Financing (2014), available at, <<https://sustainabledevelopmentun.org/content/documents/4588FINAL%20REPORT%20ICESDF.pdf/>>.

**172** Sanjiv Kumar, Neeta Kumar, Saxena Vivekadhish, *Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs): Addressing Unfinished Agenda and Strengthening Sustainable Development and Partnership*, 41 *Indian J Community Med*, no. 1 (2016), available at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>>.

**173** Speech by Jim Yong Kim, President World Bank at United Nations General Assembly (September 25, 2015), available from: <<http://www.worldbank.org/en/news/speech/2015/09/25/speech-united-nations-generalassembly/>>.

**174** Sanjiv Kumar, Neeta Kumar, Saxena Vivekadhish, *Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs): Addressing Unfinished Agenda and Strengthening Sustainable Development and Partnership*, 41 *Indian J Community Med*, no. 1 (2016), available at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>>.

**175** *Ibid.*

**176** The Economics of Optimism. The Debate Heats up about what Goals the World should Set Itself for 2030, available at: <<http://www.economist.com/news/finance-and-economics/21640361-debate-heats-up-about-what-goals-world-should-set-itself-2030/>>.

**177** Sanjiv Kumar, Neeta Kumar, Saxena Vivekadhish, *Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs): Addressing Unfinished Agenda and Strengthening Sustainable Development and Partnership*, 41 *Indian J Community Med*, no. 1 (2016), available at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>>.

Thirdly, India faces the challenge of accountability for the attainment of the SDGs. With the MDGs, there was a lack of accountability for inputs at all levels.<sup>178</sup> With the SDGs, India will need to determine which institutions within its government will be accountable for ensuring any reforms put into place achieve their intended outcomes.<sup>179</sup>

Fourthly, the disproportionate presence of Indian lawmakers with criminal records has shaken confidence in legal and political institutions as well as the rule of law more broadly. In India, politicians who have been charged with or convicted of serious misdeeds are three times as likely to win parliamentary elections as those who have not.<sup>180</sup> In particular, 34% of members of parliament in the Lok Sabha (the lower house of Parliament) have had criminal charges filed against them, a figure that is rising.<sup>181</sup> Most of the charges facing these MPs are for serious crimes, including murder, kidnapping and crimes against women.<sup>182</sup> According to one scholar, the rise of candidates with criminal records in Indian Parliament may have arisen because voters in India sometimes prefer criminally-connected candidates who have a reputation for “getting things done,” offering protection, and using whatever means necessary to secure their community’s interests.<sup>183</sup> For this reason, the public views institutions as having been captured by entrenched political and identity-based interests. To break crime’s hold on elected office, and to prepare its institutions for further development, India will need to tackle larger questions of political party funding, corruption and the government’s capacity to protect its citizens.<sup>184</sup>

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**178** *Ibid.*

**179** Report by the United Nations High Level Political Forum, *Voluntary National Review Report on Implementation of Sustainable Development Goals* (2017), p. 30, available at: <[http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)>.

**180** <https://www.economist.com/books-and-arts/2017/02/04/why-many-indian-politicians-have-a-criminal-record/>>; See also: <<https://www.hindustantimes.com/india-news/bjp-has-highest-no-of-mps-and-mlas-with-cases-of-crime-against-women-study/story-UKFaWnMeVYCXCED03AZdGP.html/>>.

**181** “Why Many Indian Politicians Have a Criminal Record”, *The Economist* (2017), available at: <<https://www.economist.com/books-and-arts/2017/02/04/why-many-indian-politicians-have-a-criminal-record>>.

**182** Charlotte Alfred, *India’s New Parliament has the most members facing criminal charges*, Huffpost (2014), available at: <[https://www.huffingtonpost.ca/entry/india-parliament-criminal-charges\\_n\\_5365225/](https://www.huffingtonpost.ca/entry/india-parliament-criminal-charges_n_5365225/)>.

**183** *Ibid.*

**184** *Ibid.*

It is without a doubt that India has embarked on ambitious plans to reduce its poverty levels and to meet the SDG targets. The process of institutional change and reform was adopted with the aim of improving the functioning of governance,<sup>185</sup> and thereby empowering its citizens through a process of transparency and accountability. The very first step of empowerment is to improve health, education and poverty related outcomes. So far, India's track record in its pursuit of has fell seriously short of its commitments. As noted above, India ranked 131st of 187 countries in the 2016 UNDP HDI.<sup>186</sup> In 2015, the country had the second-highest estimated number of undernourished people<sup>187</sup> and ranked 55th out of 76 countries in the Global Hunger Index.<sup>188</sup> This begs us to question where the faults lie in India's development.

India, similar to many other contexts had to work with the inherent design flaws of the MDGs platform. The targets-based approach is arguably unachievable and simplistic,<sup>189</sup> and does not adapt to country-specific needs, let alone the disparities between regions, genders, and social structures.<sup>190</sup> This is a pertinent point in the Indian context as it has deprived specific and vulnerable sections of the Indian population from their baseline needs. Added to this are internal factors such as rampant corruption, red tape, and a lack of accountability and transparency, that have severely hindered the country's progress.<sup>191</sup>

The MDGs, in our view, were not attuned to the baseline conception of distributive justice. Arguably, the MDGs put the cart before the horse, by focusing too heavily on the targets and not on overall and inclusive development, or the individual and multi-faceted nature of human experience. The 17 SDGs are in many ways a step in the right direction. They go further in creating additional

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**185** Nandini Ramanujam, Mara Verna, Julia Betts, Kuzi Charamba and Marcas Moore, *Rule of Law and Economic Development: A Comparative Analysis of Approaches to Economic Development across BRICS Countries*, McGill University: The Rule of Law and Economic Development Research Group (2012), p. 21.

**186** United National Development Programme, *2014 Human Development Report* (2014), available at: <<http://www.undp.org/content/undp/en/home/presscenter/events/2014/july/HDR2014.html>>.

**187** Report by the Food and Agriculture Organisation of the United Nations, the International Fund for Agricultural Development and the World Food Programme, *'The State of Food Insecurity in the World,'* (2015), p. 19, available at: <<http://www.fao.org/3/a-i4646e.pdf>>.

**188** Priyam Sengupta and Kakali Mukhopadhyay, *Economic and Environmental Impact of the National Food Security Act of India*, 4 *Agricultural and Food Economics*, no. 5 (2016), 2.

**189** Maya Fehling, Brett Nelson and Sridhar Venkatapuram, *Limitations of the Millennium Development Goals: A literature Review*, 8 *Global Public Health*, no. 10 (2013), 1110.

**190** Suman Kannoujia, *Inclusive and Sustainable growth in India – Issues and Challenges*, 2 *International Journal of Applied Research*, no. 8 (2016), 582.

**191** *Ibid.*, p. 581.

targets that directly link to distributive justice and include discussions on how to better divide development costs and benefits among populations and individuals.<sup>192</sup>

The SDGs are remedial; countries have made commitments towards these goals and aim to work in partnership to provide immediate responses to very unjust conditions. Moreover, our baseline conception of justice demands that policies to achieve the SDGs must enhance people's overall capabilities to pursue what they have reason to do and value. The capabilities approach recognizes the plurality, complexity and shifting nature of human needs and aspirations, as opposed to assuming that these myriad factors can be adequately captured by abstract principles of justice that are set out in advance. This is a sentiment that is echoed in the work of Nussbaum and Sen. Nussbaum begins *Creating Capabilities* by telling the story of Vasanti from Ahmedabad in northwestern India, who like many women, faces particular barriers in accessing education or gaining employment due to gender discrimination.<sup>193</sup> In the "Idea of Justice," Sen posits that "[j]ustice is ultimately connected with the way people's lives go, and not merely with the nature of the institutions surrounding them."<sup>194</sup>

## 5 Conclusion

In this article, we have posited that India's plans to achieve the MDGs faltered because reforms designed to alleviate poverty and achieve equitable growth failed to address weaknesses in institutions of accountability. For this reason, problems such as weak and changing political will and agenda, poor accountability mechanisms, weak enforcement mechanisms and corruption have not been sufficiently addressed.

The SDGs present a real opportunity to direct India towards a path of equality and equity by 2030. As we have shown, this latest set of development goals present a greater opportunity for states to attain the baseline conception of distributive justice than the MDGs. This opportunity arises because the SDGs have created targets that incorporate distributive justice as an aim and include

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**192** Rita Vasconcellos Oliveira, *Back to the future: The potential of intergenerational justice for the achievement of the sustainable development goals*, 10 MPDI: Sustainability Journal (2017), 432.

**193** *Ibid.*, pp. 16–42.

**194** Amartya Sen, *The Idea of Justice* (Reprint ed., Belknap Press: An Imprint of Harvard University Press, 2011), p. x.

discussions on how to better divide development costs and benefits among populations and individuals.

Our baseline conception of distributive justice, which draws on the capabilities approach, recognizes the intrinsic importance that individual agency and empowerment has on wellbeing and defines a set of basic capabilities that are important to a dignified human life.<sup>195</sup> The SDGs, as envisioned through our baseline conception, can be used as a tool to transform the basic set of capabilities, which consist of the various beings and doings a person has reason to value, into political commitments. The key strength of the capabilities approach is its concern with the non-economic barriers that perpetuate injustice and inequality (social, physical, environmental, attitudinal). For example, examining MGNREGA through the lens of the capabilities approach may lead us to acknowledge that employment programmes targeting women can still create losses in individual capabilities when the conditions surrounding their employment lead to women having little control over the terms of their participation or their economic situation.

As the nation shifts its attention to Agenda 2030, its renewed commitment to institutional reforms presents tremendous potential for India to address human development concerns, which must incorporate a focus on distributive justice. Envisioning the SDGs in light of the capabilities approach allows us to consider SDG policies and programmes that seek to empower citizens through their participation in institutions, society, and economic activities.

The MDGs are considered a success largely because China was able to lift hundreds of millions of people out of poverty. Now it seems that the success of the SDGs will depend on India's development agenda and its impact on some 1.3 billion inhabitants – and its ability to match its strong political commitment with equally robust execution. The targets envisioned by the international community are ambitious, and the road to eliminate extreme poverty by 2030 will be arduous. The centrality of distributive justice in India's reform agenda, therefore, is imperative to realizing the promise of the SDGs and to move towards a world where no one is behind.

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<sup>195</sup> Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011), pp. 33–34.



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