EXPANDING SOCIAL SECURITY IN A NEO-LIBERAL WORLD: INDIA'S TRYST WITH RIGHTS-BASED APPROACHES

I am privileged to be invited to give this lecture to honour the memory of Dr. William David Hopper, the first President of the IDRC. Dr Hopper not only had close ties with India, he also contributed to the country's green revolution. Today, Indian agriculture is confronting its second major crisis since Independence both in sustaining production and rural livelihoods with a large number of reported suicides by farmers faced with distress conditions.

The world has witnessed enormous changes since 1970, the year in which the IDRC was founded. The dominant economic doctrine of the time, Keynesianism, informed the development paradigm both in the developed and the developing world but developing countries were also undoubtedly influenced by the centrally planned socialist economies. Politically, the bipolar nature of the world influenced the discourse on the primacy of values and of rights. The many changes that took place since then gradually reduced the influence of Keynesianism in the developed world, increased the power of the Bretton Woods institutions in the developing world, and have created a new neo-liberal international order, which provides the ground rules for much greater integration of world financial and commodity markets.

This is not the place for me to review the wider impact of these changes. What I wish to do is to briefly review their impact on challenges to the expansion of social security in the developing world and to focus on what may be termed as a rather novel approach to the expansion of social security, namely a rights-based approach, which has increasingly come to the forefront, especially in the Indian discourse on the expansion of social security.

'Social security' is a familiar term to western audiences. Over time, social security has been the primary public policy instrument for the direct sustenance of living standards of workers and citizens in industrialised countries, absorbing over half the total government expenditure. The basic idea of social security is to use social means to prevent deprivation and vulnerability to deprivation (De Swaan 1988, ILO 2002).

Conventionally, the notion of social security has been linked to the workers' status in formal labour markets and the focus has been on contingencies rather than on deficiencies. From the point of view of developing countries, the two notions (viz. deprivation and vulnerability) are closely interlinked, necessitating a broader notion of social security. Jean Dreze and Amartya Sen distinguish between two aspects of social security: -- 'protection' and 'promotion' (Dreze and Sen, 1988, 2002). The former is concerned with preventing a decline in living standards in general and in the basic conditions of living in particular. The latter has the objective of enhancing normal living conditions and helping people overcome regular and persistent (capability) deprivation. Others have distinguished between 'Basic Social Security' i.e. social provision of a critical minimum to conditions of 'deficiency' in such basic wants as food, health, education and housing and Contingent Social Security (CSS) which refers to socially supported institution arrangements to meet conditions of 'adversity' such as sickness, accidents and old age (Kannan 2004). The ILO and many other international organizations, now use the broader concept of "social protection", which covers not only social security but also non-statutory schemes.

Evolution of Social Security in Developed Countries: Key Lessons

A review of the brief history of the evolution of social security system in the developed countries today shows that it has expanded and sustained under three main forces: (i) the rising insecurity which accompanied industrial revolution and the further episodes of economic crisis, such as the Great Depression; (ii) the consolidation and radicalisation of working class movements; and (iii) the growth of political democracy.

Formal social security systems in the present-day industrialised countries began their journey with the English Poor Laws of 1834, in which the 'deserving poor' were provided meagre benefits in terms of food and shelter through a tax-financed system. Bismarck introduced the social insurance scheme covering sickness and pensions in Germany in 1873. The first unemployment insurance scheme was introduced in France in 1906.

The driving force of the expansion of social security appears to be the emerging industrialisation which exposed masses of workers to new risks and insecurities. The enclosure movement led to the dispossession of a large number of workers. As the industrial labour force expanded, the workers formed mutual aid societies for assistance in times of need. This formed the basis of the contemporary social insurance systems. There was a gradual strengthening of working class organisations and movements and of political parties representing their interest. This led to a deepening of democracy on the one hand and the response of the state through development of systems of social security, partly to ward off more radical pressures and demands (Kannan 2004).

The scope and coverage of social security benefits expanded during the inter war period. This was once again spurred by the depression and by high levels of unemployment. The Social Security Act of the Roosevelt Administration and the Beveridge Report (both products of the immediate post-Depression period) became milestones in the development of social security. These systems continued to expand in the post-war period both in terms of coverage, nature and quantum of benefits.

There are significant differences among the OECD countries in the patterns of social security. The broad typologies that are discussed are the liberal welfare model (Canada, US, Australia), the corporatist model (Austria, France and Germany) and the social democratic system (of the Scandinavian countries) (Esping-Anderson, 1990). The liberal welfare model emphasizes means tested assistance, modest universal transfers or modest social insurance plans. The corporatist model emphasises class and status in access to social security benefits and is influenced by family and church traditions. The social democratic model seeks to achieve the highest standards, not only of minimum needs. Redistributive impact is high in the European countries especially Belgium, Denmark, France, Italy and Ireland. The percentage of GDP devoted to social security exceeds 20 % in the Scandinavian countries and Germany and lower than 20% in the US, Australia, Canada, Japan amongst others. There are also differences in financing with most countries using the social insurance route to finance pensions, unemployment and sickness. Regardless of these differences, these countries provide reasonably effective social security cover to a large segment of their population

Impact of Ideological shifts since the 1980s

Social security in the industrial countries reached its apogee in the 1970s. In Western Europe, by 1975, total social expenditure accounted for nearly 25 per cent of national income, having grown almost twice as fast as GDP since the early 1950s (ILO, 1995). Starting in the late 1970s, however, the welfare state came under increasing pressure from powerful forces and interests. The resistance to expanding social public expenditure was led by conservative policies of Thatcher and Reagan in Britain and the USA. It was aided by a marked slowdown in economic growth in the Western countries since 1974 and by rising unemployment, inflation and budget deficits. There was a strong attack on the supposed inefficiency of public expenditure and the negative effects of high taxes and some elements of the welfare state on incentives to work, save, invest and take risks.

The neo-liberal policies that gained ascendancy in the 1980s spurred a strong wave of economic liberalization, privatization of state enterprises and services and deregulation of the economy. The intensification of globalization, technological change and competition led to further pressures for containing public expenditure and reducing tax rates. Over the past two decades this has resulted in many countries dismantling key social programmes and reducing the scope, level and range of benefits. There is also a trend towards privatizing social security – replacing or supplementing government schemes by private schemes or contracting private agencies to manage existing schemes (ILO 2002, Stiglitz 2006). In some countries the universal, rights-based programmes are being converted into targeted schemes with beneficiaries subjected to a means test (Esping-Andersen, 1996; Hoskins et al., 2001).

Despite these measures, the ratio of public social expenditure to GDP rose slightly or stayed constant in most countries between 1985 and 1996 (ILO, 2000). The social security systems in the OECD countries have continued to retain their basic features. This provides evidence that social security systems are deeply embedded in national economic, social and political structures and reflect deep rooted political consensus.

The Transitional Economies

The erstwhile socialist countries were from the very beginning committed to providing comprehensive social security to their population, even at low levels of development. This was usually in the form of full employment, retirement benefits, provision of basic needs, access to productive assets such as land in agrarian societies, and other egalitarian redistributive measures.

The social and economic consequences of the Bretton Woods policies were catastrophic in the transitional economies in the short- and medium term. Between 1989 and 1993, real GDP fell by 15 per cent in the five countries in Central Europe, 32 per cent in South East European states, 42 per cent in the Baltic states and 30 per cent in the ex-Soviet Union republics. Even by 1999, ten years into transition, only the Central European countries had exceeded their earlier GDP levels (by 9 per cent). In the Commonwealth of Independent States (CIS), output levels were 55 per cent below those in 1989, in South East European transition economies by 30 per cent and in the Baltic states by 35 per cent (Emmerij et al., 2001). Total employment in the former communist countries had fallen by 15 to 20 per cent. The number of people living in poverty rose from 14 to 119 million between 1988 and 1994, which raised the percentage of the population living below the poverty line ($4 a day in 1990 PPP) from 4 to 32 per cent (Zimny, 1997). Health and education indices have deteriorated and inequalities have increased sharply in most countries, reflecting the collapse of the social security system.

The new social security systems in these countries are still in a transitional phase although their main contours are clear. The situation varies a good deal between different groups of transition countries: the Baltic and the Central European states on the one hand and the East and South East European states on the other. Conditions are much worse in the Caucasian and Asian states.

On the whole, a system that provided a comprehensive package of social security, albeit at modest levels, has been replaced by a highly selective and targeted system which excludes a significant proportion of the population. The tightening of conditions for unemployment benefits has left an important minority of jobless workers with no form of compensation. The social security institutions lack the capacity to collect contributions from a significant proportion of enterprises. The growing informalization of the economy is further intensifying the problem of collecting social insurance contributions. The result is that growing numbers of the working population are falling outside the framework of the social insurance system – a situation not unlike the one prevalent in many developing countries (Ghai 2002).

Challenges to Expansion of Social Security in Developing Countries

In the developing countries, unlike the OECD countries, vast segments of the population lack formal social security cover, and suffer from persistent, chronic deprivation. As Jean Dreze and Amartya Sen remind us, the "majority of humanity face an almost total *absence* of security in their fragile and precarious existence". ….. It is this general fragility, on top of chronic and predictable deprivations that makes the need for social security so strong and palpable." (Dreze and Sen, 1989, p. 1).

The ILO (2002) states that more than half of the world's population (workers and their dependants) is excluded from any type of social security protection. The position varies across, and between sub-groups of countries. The situation is worst in sub-Saharan Africa and South Asia, where statutory social security personal coverage is estimated at 5 to 10 per cent of the working population and in some cases is decreasing. In Latin America, coverage lies roughly between 10 and 80 per cent, and is mainly stagnating. In South- East and East Asia, coverage varies from about 8 percent to 100 percent, and in many cases has shown some recent increase.

Two main reasons are usually mentioned for the inadequacy of social security in developing countries – viz. the structure of the economies and their level of development.

One of the reasons for the lack of extension of coverage of formal social security is that, contrary to expectations, the already high proportion of the workforce in the informal sector is either stagnant or increasing. Even in countries with high economic growth, increasing numbers of workers — often women — are in less secure employment, such as casual labour, home work and certain types of self-employment. Although this phenomenon is not restricted to developing countries, the share of the informal workforce in such countries is exceptionally large.

In Latin America, most countries of Africa, South Asia and many other parts of the developing world in recent years most of the increase in the urban labour force has taken place in the informal economy. In the case of Kenya, informal employment accounted for almost two-thirds of total urban employment in 1996, compared with just 10 per cent in 1972. In India, for example, if agriculture is included, more than 92 per cent of workers are to be found in the informal economy and this proportion has shown an increase over the last two decades. Informal workers include various categories: employees, self-employed, homeworkers, unpaid family workers, and unregulated wage labour. In many countries a higher proportion of women work in the informal economy, to some extent because there they can more easily combine work with their heavier burden of family responsibilities, and partly for other reasons related, for example, to discrimination encountered in the formal economy. ILO statistics show that in two-thirds of the countries for which separate figures are available, the informal economy accounts for a higher share of total female urban employment than is the case for men. There is a widespread tendency for women to remain trapped in the informal economy for much of their working lives, whereas for men — in the industrialized countries at any rate — it is less likely to be permanent.

Informal economy workers have little or no security of employment or income. Their earnings tend to be very low and to fluctuate more than those of other workers. A brief period of incapacity can leave the worker and her or his family without enough income to live on. The sickness of a family member can result in costs which destroy the delicate balance of the household budget. Work in the informal economy is often intrinsically hazardous and the fact that it takes place in an unregulated environment makes it still more so. Women face additional disadvantages due to discrimination related to their reproductive role, such as dismissal when pregnant, or upon marriage.

The growing informalization of the developing economies is significantly a result of globalization and structural adjustment policies. These policies have also resulted in privatization, downsizing, outsourcing and flexibilization of labour relations. Globalization, either alone or in combination with technological change, has exposed large sections of workers in developing countries to greater income insecurity as a result of greater openness and higher price risk in world markets. Reductions in income security and social protection also arise from the attempts of governments to promote competitiveness and attract foreign direct investment. Tax competition also results in further reductions in taxes, particularly on returns to capital, lowering the ability of governments to finance social protection (ILO 2002).

The successive waves of structural adjustment programmes have also led to wage cuts in the public and private sectors, thereby eroding the financial base of statutory social insurance schemes. In addition, structural adjustment programmes have often resulted in severe cuts in social budgets. In Benin, for example, health expenditure’s share in the total government budget dropped from 8.8 to 3.3 per cent between 1987 and 1992 (ILO, 2002)..

The preponderance of the informal economy compounds the problem of extension of social security in several different ways: first, different segments of the informal workforce have different needs in which the immediate take precedence over the long-term; second, the lack of organization among the informal workers leads to absence of voice and demand; third, delivery and administrative costs tend to strain weak governance structures. But the diversity of experience shows that these problems are, however, not insurmountable in the face of strong public action.

The level of development of the developing economies is cited as the other most important reason for the inadequacy of social security. In fact, some observers have gone so far as to say that at the present levels of development, developing countries ought not to aspire for universal coverage of their populations (for e.g., Streeten 2003).

Within the group of developing countries, there is indeed some relationship between per capita income and social security expenditures. But the relationship is not strong (Ghai 2002, Dreze and Sen 1991). Ghai (ibid.) suggests that there are four groups of developing countries that have relatively more adequate social security coverage. These are those with broad based growth, mineral rich countries, countries with a socialist orientation, and those with a social welfare approach. The fourth category (among developing countries) comprises a diverse range of countries that have succeeded in building most of the key elements of a comprehensive social security system, albeit at modest levels. These countries have succeeded in providing universal primary education and health services, as well as food subsidies for the poor. They include Sri Lanka, the Indian state of Kerala, Costa Rica and Chile. These countries have followed a combination of models, based on state contribution and social insurance.

The diverse experience of the developing countries has led Dreze and Sen (1991, 2002) to compare two alternative strategies to deal with vulnerabilities and deprivation which they characterise as “growth led” and “support led security”, with the latter relying directly on wide ranging public support to areas such as employment provision, health care, education, and social assistance.

There is also now a large body of evidence in the developing countries which suggests that higher levels of social security translates itself into higher productivity and growth and lower levels of poverty, although these effects may be felt with a lag. But in the economic and ideological environment in which the developing countries today find themselves operating, the impact of social security (which in the context of these countries usually also implies a higher level of social spending) on growth and development is vastly underrated, with fiscal incentives and relief favouring capital usually being the order of the day.

In fact as Ghai (2002) argues, except in the poorest countries, the real problem is not scarcity of resources. It is rather, as we shall see later in the context of India, the nature of internal and external constraints imposed by a neo-liberal growth strategy and the political marginalization of the destitute.

Social Security as a Human Right

The post war consensus on social security (both basic and contingent) is clearly set out in the Universal declaration of Human Rights. Articles 22 to 26 state the universal rights of each individual to a basic standard of life, to proper working conditions and to social security and social protection. The International Covenant on Economic, Social and Cultural Rights, 1966, again recognizes "the right of everyone to social security, including social insurance" (Article 9) and Articles 10 to 13 of the Convention elaborate on the right of mothers and infants, the right to a decent standard of living, the right to food, health and education.

The Universal Declaration of Human Rights constitutes both civil and political rights (Articles 1 to 21) and economic, social and cultural rights (Articles 22 to 28). In fact, as Sengupta (2001), the United Nations Rapporteur on the Right to Development shows, the Universal Declaration reflected the immediate post-war consensus about human rights based on what President Roosevelt described as four freedoms – including the freedom from want – which he wanted to be incorporated in an International Bill of Rights. There was no ambiguity at that time about political and economic rights being interrelated. The consensus over the unity of civil and political rights and economic, social, and cultural rights was broken in the 1950s, with the spread of the cold war. Two separate covenants, one covering the civil and political rights and another covering economic, social and cultural rights, were promulgated to give them the status of international treaties in the late 1960s, and both came into force in the late 1970s. The affirmation of the Right to Development, integrate in Sengupta's view, economic, social, and cultural rights with civil and political rights in the manner that was envisaged at the beginning of the post-second war human rights movement.

The implication of accepting the rights to education, food, health, social security etc. as human rights is that it obligates the authorities, both nationally and internationally, to fulfill their duties in delivering (or in human rights language, promoting, securing, and protecting) that right in a country. If the right to food, education, and health are regarded as human rights, the state has to accept the primary responsibility of delivering the right either on its own or in collaboration with others. It has to adopt the appropriate policies and provide for the required resources to facilitate such delivery because meeting the obligation of human rights would have a primary claim on all its resources – physical, financial, or institutional – that it can command (Sengupta 2001).

There are three principal reasons why there is an opposition to considering economic and social rights as inalienable human rights: (a) human rights are individual rights; (b) they have to be coherent, in the sense that each right-holder must have some corresponding duty-holder whose obligation would be to deliver the right and (c) human rights must be justifiable (Sengupta 2001).

The first of these implies that human rights are only personal rights, based on negative freedom, whereas economic and social rights are associated with positive freedoms which the state has to secure and protect through positive action. These arguments have been substantially repudiated in literature (Alston 1988, p. 7; Taylor 1986, p. 10; Dyke 1985, p. 11). Furthermore, the identification of civil and political rights with negative rights and economic, social and cultural rights with positive rights is too superficial because both would require negative (prevention) as well as positive (promotion or protective) actions.

The second criticism, which Amartya Sen (1999) has described as ‘the coherence critique’ is spelt out as, “Rights are entitlements that require correlative duties.” Sen argues that for a right to be treated as an entitlement, it needs to be characterized only by what Kant called an imperfect obligation, “When the claims are addressed generally to anyone who can help, even though no particular person or agency maybe be charged to bring about the fulfilment of the rights involved” (Sen 1999, p. 8]. In this perspective, any economic or social right for an individual or a collective can qualify as a human right, provided the moral standard or the ethical assertion of the right is accepted by all people in a particular civil society; and provided it is possible to identify at least a group of possible duty-holders, if not one specific duty-holder, who are in a position to deliver that right and who are willing to accept their obligations to help.

The above argument counters the criticism that human rights have to be justifiable. This criticism confuses human rights with legal rights (Sen, ibid., Sengupta, ibid.). Human rights are based on moral standards on a view of human dignity, and which have many different ways of fulfilment depending on the acceptability of the ethical base of the claims. This, however, does not of course minimize the importance or usefulness of such human rights are translated into legislated legal rights.

In other words, once the right to social security is accepted as a human right, this entails the obligation on the part of the state (the primary duty holder), its international partners, and the community “should try to realise, as expeditiously as possible, the while range of substantive rights – such as the right to food, health, education etc.” (Osmani 2003: 38). It does not entail as Streeten (2003) argues, “immediate fulfillment” nor can it be relegated to being a mere “aspiration”. Furthermore, since fulfillment requires resources there exists not only complementarity between rights, but also trade-offs and the “speedy realisation of rights calls for softening the resource constraint, which in turn calls for economic growth”. (Osmani, ibid. pp 39-40).

There is another somewhat familiar set of arguments against according economic and social rights the status of “human rights”. These are they could distort the pattern of savings and labour market behaviour and blunt the incentives to work and save (Streeten 2003). Since these arguments can be advanced against any social security arrangement, there is nothing new about them, except that, as we have noted earlier, this strand of argument has grown decisively stronger in recent years.

Rights-based Approach to Social Security in India

In India, formal social security arrangements (including health care, accidents, and old age benefits) cover about eight percent of the workforce in the formal sector. Another 6 percent of the workforce is estimated to be covered under some sort of social security mechanism based on social insurance principles and state contributions. In the state of Kerala, 57 percent of the informal workforce has some social security protection, provided through the mechanism of occupation based ‘Welfare Funds’. Although, the state is expected to be the main provider of health services, in actual fact, a majority of hospitalisations occur in the private sector, while the private sector (both qualified and unqualified) is responsible more than 90 percent of out-patient care.

India evolved a large plethora of schemes and programmes to provide social assistance generate employment during slack seasons and droughts, improve access of the poor to land and other productive assets etc. But with some exceptions (such as the Employment Guarantee Scheme in Maharashtra), these schemes are non-statutory in character, and have a thin spread.

India’s social security expenditure is a relatively small part of GDP and total public expenditure – approximately 3.6 to 4.8 percent in the former case and 12 to16 percent respectively – depending on the items that one chooses to include in the rubric of social security

The extent of persistent capability deprivation in the country is high and the rate of improvement is low and uncorrelated with the high rate of growth (5.5 to 6 percent) experienced in the last two and a half decades. There are also large regional differences with the deprivation in some areas being on par sub-Saharan Africa (Dreze and Sen, 2002), while other regions (States such as Kerala, Goa and Himachal) show high levels of social development. Kerala, like Srilanka, achieved high levels of social development. The successful states, especially Kerala, underwent large-scale political mobilization, on the one hand, and state policy which favoured land reforms, labour rights, social development and social security, on the other. In the 1980s, Kerala’s high level of social development was seen to co-exist with economic stagnation, and this was partly explained on the basis of labour market conditions. This generated a great deal of discussion on the specificities of the “Kerala model of development”. Subsequently, however, Kerala’s rate of growth picked up and there has been a rapid decline in income poverty, bringing the state (a middle income state) on par with Punjab the highest income state.

Thus, international comparison apart, Indian regional experience has also highlighted the scope of expansion of social opportunities at present levels of income (Dreze and Sen, 2002).

Apart from the 'fundamental rights', the Indian constitution gives a pride of place to the Directive Principles which link political democracy with economic and social democracy. This was one of the main objectives of the Indian Constitution. Ambedkar, the founder of the Indian constitution, himself pointed out:

> *Our object in framing the Constitution is really two-fold: (i) To lay down the form of political democracy, and (ii) To lay down that our ideal is economic democracy and also to prescribe that every government whatever is in power shall strive to bring about economic democracy. The Directive Principles have a great value, for they lay down that our ideal is economic democracy.*[1]

The Directive Principles of the Indian constitution lay down directions and goal posts in the achievement of economic rights, but they are not justifiable. They are however to be used by the government in making laws:

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

Of particular interest in the Directive Principles, to us here, are Article 41 which directs the state to "within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want"; Article 41 and Article 45 by which "the State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."; and Article 47 by which "the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties …."

Till the 1990s, the Indian discourse on expansion of social opportunity was not rights-based. The 1986 National Policy on Education (modified in 1992) did not mention the rights-based context of basic education. This first arose in the context of education on the basis of judgements in the Supreme Court which interpreted the "Right to Life" (a fundamental human right) with a right to life to dignity, and indicated that access to basic education, health and food were part of a citizen's claim to a right to life with dignity. This judgement catalysed the civil society movements in India, since the Directive Principles of the Indian

[1] Proceedings of the constituent assembly of India, Friday November 19, 1948; available at http://www.parliamentofindia.nic.in/debates/vol17p9.htm.

constitution (themselves not justifiable) could be interpreted in terms of their linkage with fundamental rights. Using this broad interpretation, civil society initiatives sought to convert Article 45 of the Directive Principles into a Fundamental Right. The broad-based campaign resulted in the government bringing in an amendment in 2002 in the Indian constitution making the Right to education of all children in the 6 to 14 year age group, a fundamental right. However, for the Article to become justifiable, the government needs to legislate a model bill on the obligations of the Centre and the provinces which is still pending.

Another campaign since the early 1990s arose around the “Right to Information”. In 1993, the government considerably enhanced the powers of powers of rural and urban local bodies, creating a third tier of local self-government below the Centre and States. The local bodies also received higher amounts of funds through various fiscal devices. But lack of transparency and local accountability facilitated corruption and inefficiency in the expenditure of these resources. The campaign, which first gathered steam in Rajasthan, was able to pressure the state government into adopting a legislation entitling citizens to records and muster-rolls and other vital documents. Some other governments followed suit. This experience went into the making of a new law by the Centre (promised by the present government before it came to power) – the Right to Information Act, 2005, which asks for pro-active disclosure of public information, and gives citizens the right to demand disclosure of all public records. The legislated right to information thus became an instrument for citizens to protect and secure their rights and entitlements.

As mentioned earlier, Article 41 of the Constitution directs the government “within the limits of its economic capacity and development, make effective provision for securing the right to work”. The government has been making provisions for creation of unskilled employment in rural areas and in times of need, but these provisions have been low, and have not been based on entitlements. This led to a campaign for a “guaranteed” right to work, which became part of the manifesto of the current ruling coalition. It took several years of intense debate in the public realm, which ultimately saw a unique consensus across the political spectrum for the Parliament to pass the National Rural Employment Guarantee Act 2005 (NREGA) which guarantees every rural household 100 days of wage employment and an unemployment allowance on failure to provide such employment, under hitherto unknown labour standards, information disclosure and social audit norms.

The right to food has also been interpreted by the Supreme Court as being a corollary to the right to life and Article 47 directly enjoins the state to raise the level of nutrition. But as Dreze (2004) has observed, the right to food is a right which is difficult to concretize. Nevertheless, some parts of this right can be converted into a claim, perhaps even backed by a legal entitlement. In a case on the right to food, the court has directed the government to provide for mid-day meals in primary schools and to open ICDS Centres (which, among other things, provide supplementary nutrition to young children) in every habitation.

Finally, Article 41 refers to the Directive Principles on social security, which has also figured prominently on the programme of the current government. The National Commission for Enterprises in the Unorganised Sector (NCEUS) has now proposed legislation for a national minimum social security package for unorganised workers, who remain without any social security cover (NCEUS, 2006). The National Minimum Social Security package combines social insurance with social assistance and proposes to provide modest life and health cover, and old age benefits to all workers within a period of five years. The Scheme will be financed by contributions from the Centre and State governments, employers (where identifiable) and workers.

The last few years have thus seen a dramatic extension of rights-based social security initiatives in India, catalysed by civil society pressure, but in many cases also supported by governments in power and by political parties across a wide spectrum. That this has occurred in a period when a larger role for government in the social sector is certainly not self-evident is indeed quite a remarkable testimony to the deepening of Indian democracy.

Some Implications and Emerging Contradictions of the Rights-based Approach in India

There are a few clear-cut implications that are supposed to follow from a rights-based approach, such as the one that has gained popularity in India. First, such an approach can create some pressure on the state and other obligation holders to follow concerted strategies which can lead to the fulfilment of these rights. This includes higher allocation of resources to the relevant areas. Second, the creation of rights and specific entitlements might lead to a greater demand, and encourage a process of greater participation, and give greater voice, which is otherwise lacking among dispersed and poor social groups. Third, this might lead to greater accountability of the providers and increase the efficiency of delivery, a crucial issue in countries where governance structures are weak.

The recognition of certain basic rights appears to have helped in increasing the resource availability for the fulfilment of that right. For example, as Dreze (2003) points out, the broad recognition of elementary education as a fundamental right of every child has contributed to the relatively rapid expansion of schooling facilities and school participation in the 1990s. The reach of the schooling system has expanded so fast in a period of structural adjustment and general disengagement of the state. The increase in financial resource availability for basic education has been made possible through the levy of a cess on service tax and a surcharge on income tax since 2004-05. The wide acceptance of elementary education as a fundamental right of every child has also given education activists a powerful foothold to resist any attempt to dilute the constitutional commitment to free and compulsory education until the age of 14.

This is in contrast with the corresponding situation in the field of health care which has still not been recognized as a basic right and which continues to suffer from an intensification of state abdication in this field.

The legislation on guaranteed employment in rural areas has also elicited a specific commitment from the state, in terms of allocation of financial resources. The overall financial resources made available for employment programmes was raised from Rs 1100 billion to Rs 1430 billion in 2006-07, although the actual demand for funds may be much lower than the amount allocated.

The issues of increased demand, accountability, efficiency and voice are more difficult to comment upon, but certainly in specific areas, the provinces appeared to have responded to pressures from below, and have brought innovations in service delivery, which are unlikely to have happened in the same scale in the absence of the rights-based initiatives.

There are, however, strong opposing tendencies which need to be focused upon. Some aspects of this opposition could be a manifestation of intense hostility to the ‘welfare state’ in the corridors of power and among the elite classes (Dreze 2003, Weiner 1991) There are often unfounded observations that the creation of legal entitlements would lead to a deluge of legal disputes, grounding the government machinery.

But a major obstacle is the expressed inability of the state to meet the large financial requirements of meeting the obligations imposed by the “rights”. Thus, the state in India ostensibly has some difficulty in meeting the financial commitments of schooling for children or of social security. But this can also be seen as more an expression of a specific understanding which undervalues the linkages between social security (broadly defined) and economic development. The same fiscally constrained state does not hesitate to ‘giveaways’ of Rs 9000 billion in taxes for Special Economic Zones (more than the aggregate required for the commitments on education, employment and formal social security) which are considered desirable for growth and on export related considerations. By one token, tax exemptions (mainly on corporate income tax and customs duty) amounted to 52 percent of tax revenue collected in 2004-05 (CBGA, 2006). In the current climate of globalization, as the ILO powerfully points out (ILO 2004), moves that promote labour rights and social security are seen as being inimical to the interests of growth and the latter is seen to be exclusively linked to global competitiveness and flexible labour markets. ‘Supply side’ economics dictates lower tax incomes and lower fiscal expenditures. The tax-GDP ratio in India declined from 16 percent in the late 1980s to about 13.8 percent in the early years of this century, before recouping somewhat. And the Indian state’s ability to finance development expenditures is constrained through a legal cap on fiscal deficits. It would hardly be an exaggeration to say that an approach which focuses on economic and social rights is up against a sturdy wall built by the neo-liberal economic environment, in which the state currently operates.

Part of the obligation to secure the fulfillment of human rights is also upon the international community. In theory, many of India's international partners swear by a "rights-based approach", not least the organizations of UN, which after all gave birth to the Universal Declaration. There are some occasions in which these organizations do lend their voice and weight to "rights". The UNICEF in India did join the campaign for a right to education. But by and large, these organizations are content to promote a minimalist agenda (such as the MDGs), and advise a cautious approach to expansion of social opportunity rather than one of universalisation. Being part of the current international economic environment, the international organizations can at best try to moderate specific impacts in some cases.

We are arguably in a situation where, while, on the one hand, the pattern of growth accentuates insecurities, on the other, growth no longer remains a necessary or sufficient condition for achieving social security. This can clearly be seen from the experience not only of India, but also China, both countries which have experienced a high rate of growth for over two and a half decades. Perhaps the only answer lies in greater democratization at the national and international levels, which can sustain the move to social security as a right.

At the end, let me thank the University of Guelph, for giving me this honour and the opportunity of sharing my thoughts with you on an issue which is of vital concern to the poor working people in developing countries, and indeed everywhere else.

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