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“Institutional Responsiveness as an Instrument of Distributive Justice in India”

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## Introduction

India has made notable strides in poverty reduction and has implemented a number of strategic schemes and policies in pursuit of the Millennium Development Goals (MDGs), leading to significant improvements in quality of life and other outcomes, including reducing child and maternal mortality and controlling the spread of diseases.<sup>1</sup> Still, there are major criticisms tied to the country’s approaches to achieving the MDGs, which have largely failed to ensure inclusive and equitable development despite rapid and significant economic growth.<sup>2</sup> Deepening inequality has meant that the benefits of India’s remarkable growth have been concentrated, and have yet to “trickle down” to those in lower income groups. In turn, India remains far from reaching its true potential<sup>3</sup> and questions as to why the MDGs were not satisfactorily deployed remain unanswered.

With the international community having turned its attention to the Sustainable Development Goals (SDGs), India’s success in realizing this renewed development agenda impinges upon a sustained and credible political commitment from its government, financial resources, and policies and programs to change outcomes for its poor and marginalized populations. In this paper, we argue that in order for India to be a truly participatory democracy, it must invest in building the capabilities<sup>4</sup> of people and translate its de jure commitments of equal opportunities into de facto realization. The so-called ‘universal game changer’<sup>5</sup> action plan ought to prioritize programs and schemes related to health, education, sanitation and food security, which could truly change the game for the poor by 2030.

We posit that India’s plans to achieve the MDGs have faltered because reforms designed to alleviate poverty and achieve equitable growth have failed to address weaknesses in the institutions in place to oversee the execution and accountability functions required to deploy such reforms. In doing so, problems such as weak and changing political will and agenda, poor accountability mechanisms, weak enforcement mechanisms, corruption and the politicization of institutions have not been sufficiently addressed. As the nation shifts its attention on the SDGs, this renewed commitment to institutional reforms represents a real opportunity for the state to address human development concerns, which we argue must incorporate a focus on distributive justice.

The paper proceeds in three parts. Part one provides an introduction to India’s approach to the MDGs and examines the strategies it has deployed, and the progress made, toward achieving them. The success of the SDGs will depend, in large part, on the equitable distribution of economic growth in India. Part two 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 theory of distributive justice that can account for structural barriers in the context of India that addresses the immediate needs of the poorest and provides them with a route towards empowerment. Part three presents the global 2030 development agenda and the SDGs, assesses whether India has made a credible commitment to achieving the SDGs, and

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

<sup>2</sup> Suman Kannoujia. (2016). *Inclusive and Sustainable growth in India – Issues and Challenges*. International Journal of Applied Research 2(8) p 581

<sup>3</sup> 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*’. Online: [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) pg. 7

<sup>4</sup> See Martha Nussbaum, 2011, *Creating Capabilities*, Cambridge, MA: Harvard University Press.

<sup>5</sup> Government of India, National Institution for Transforming India (NITI) Aayog, ‘*A Universal Game Changer*,’ online: <http://niti.gov.in/content/universal-game-changer> ’

applies the baseline conception of distributive justice to the legal and political context in India. It discusses the concrete efforts and institutional changes being undertaken by India to commit to distributive justice and improve outcomes under the 2030 Agenda (SDGs), with a particular focus on reforms in the areas of health and education.

## I. India’s Development Experience

Globally, the MDGs have generated new and innovative partnerships, galvanized public opinion, and showed the immense value of setting ambitious goals.<sup>6</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 the progress has been uneven.<sup>7</sup> This section examines India’s commitment to the MDGs and assesses what progress India has made in achieving the MDGs.

### A) *The MDGs and India’s Development Agenda*

The turn of the millennium witnessed the rise of two giants on the global economic stage – India and China<sup>8</sup>. It is unquestionable that both countries have experienced high 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>9</sup>

A brief snapshot on China shows that since its economic liberalisation in 1978 to the year 2004, more than 600 million people were lifted out of extreme poverty<sup>10</sup>. India’s progress, however, paints a different picture. Although India has made notable strides in poverty reduction and has implemented several strategic schemes and policies in pursuit of the Millennium Development Goals (MDGs), the country’s progress has not been on the same pace or scale as China<sup>11</sup>. A major criticism has been India’s failure to ensure inclusive growth and development<sup>12</sup>.

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 are a set of a numerical and time-bound targets that relate to key achievements in human development. This includes 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; ensuring environmental sustainability and developing a global partnership for development<sup>13</sup>.

<sup>6</sup> Sanjiv Kumar, Neeta Kumar, and Saxena Vivekadhis, *Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs): Addressing Unfinished Agenda and Strengthening Sustainable Development and Partnership*.

<sup>7</sup> Sanjiv Kumar, Neeta Kumar, and Saxena Vivekadhis, *Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs): Addressing Unfinished Agenda and Strengthening Sustainable Development and Partnership*.

<sup>8</sup> Pranab Bardhan. (2012). *Awakening Giants, Feet of Clay*, Princeton: Princeton University Press.

<sup>9</sup> <http://www.worldbank.org/en/publication/poverty-and-shared-prosperity>

<sup>10</sup> World Bank. (2018). *Results Profile: China Poverty Reduction*. Online:

<http://www.worldbank.org/en/news/feature/2010/03/19/results-profile-china-poverty-reduction>

<sup>11</sup> Pranab Bardhan. (2012). *Awakening Giants, Feet of Clay*, Princeton: Princeton University Press.

<sup>12</sup> Suman Kannoujia. (2016). *Inclusive and Sustainable growth in India – Issues and Challenges*. International Journal of Applied Research 2(8) p 581

<sup>13</sup> Ibid.

Alongside this were supporting monitoring mechanisms that overlooked the commitments by states.

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 MDGs<sup>14</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 skepticism as to whether the targets-based approach entrenched in the MDGs was a useful framework to promote development.

### *B) India’s Progress in Achieving the MDGs*

India, in particular, 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.

#### The Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MGNREGA)

The MGNREGA<sup>15</sup> is a nationwide, centralized, social scheme developed to reduce poverty<sup>16</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>17</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>18</sup>.

In many ways, the MGNREGA had a significant impact on labour relations. It has provided laborers 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>19</sup>.

However, the scheme failed to confront the social and economic realities of India. The scheme did not adequately address the needs of the most vulnerable. Women, in particular, 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 jobs being too strenuous for them<sup>20</sup>. A major barrier stemmed from a poor understanding of childcare responsibilities. Many women complained of balancing

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<sup>14</sup> Anita Nath. (2011). ‘*India’s Progress towards Achieving the Millenium Development Goals*’ Indian Journal of Community Medicine Apr-June; 36(2): 85-92. Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3180952/>

<sup>15</sup> The MGNREGA was initially implemented as the National Rural Employment Guarantee Act (NREGA) in February, 2006.

<sup>16</sup> Rhonda Breitreuz, Carley-Jane Stanton, Nurmaiya Brady & John Pattison-Williams. (2017). ‘*The Mahatma Gandhi National Rural Employment Guarantee Scheme: A Policy Solution to Rural Poverty in India.*’ Development Policy Review 35:3 pg 398

<sup>17</sup> Ibid at 397

<sup>18</sup> Ibid at 398

<sup>19</sup> Ibid. at 409

<sup>20</sup> Ibid. at 411

childcare with employment or having a lack of child care options available to them during employment hours<sup>21</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 choice for marginalized groups<sup>22</sup> – an argument that is derived from Sen’s (1992) capabilities model, which is discussed in the forthcoming sections. This would create a more targeted and transformative change.

### Twenty-Point Program (TPP)

The Twenty-Point Program (TPP) was first launched by the government of India in 1975 and has been in existence since<sup>23</sup>. The scheme underwent significant reform in 2006, but still 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>24</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>25</sup>.

In 2015, the TPP was expected to go through another stage of restructuring<sup>26</sup>, this time reflecting more recent human development-related priorities, like sanitation. The revised TPP is aimed at ensuring that the post-2015 Sustainable Development Goals (SDGs) would be engrained in the framework.

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

The Targeted Public Distribution System (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>27</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>28</sup>.

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid. pg 414

<sup>23</sup> Report by the Government of India, Ministry of Statistics and Programme Implementation. (2006). ‘*Twenty-Point Programme*.’ Online :

[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)

<sup>24</sup> V.S. Elizabeth. (2010). ‘*Distributive Justice – Poverty and Economic Development*.’ Penn State International Law Review 28:3, pg 472

<sup>25</sup> Report by Government of India, Ministry of Statistics and Programme Implementation. (2006). ‘*Point/Items of TPP-2006*.’ Online :

[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>26</sup> Nidhi Sharma. (2015). ‘*Modi Government set to revamp Indira Gandhi’s poverty eradication Twenty Point Programme*,’ The Economic Times. Online: <https://economictimes.indiatimes.com/news/politics-and-nation/modi-government-set-to-revamp-indira-gandhis-poverty-eradication-twenty-point-programme/articleshow/49681677.cms>

<sup>27</sup> Reetika Khera. (2011). ‘*India’s Public Distribution System. Utilisation and Impact*.’ The Journal of Development Studies Vol 47 Issue 7, pg 1038 ; S. Mahendra Dev. (1998). ‘*Public Distribution System : Impact on Poor and Options for Reform*.’ Economic and Political Weekly Vol 33, No. 35, pg 2285.

<sup>28</sup> S. Mahendra Dev. (1998). ‘*Public Distribution System : Impact on Poor and Options for Reform*.’ Economic and Political Weekly Vol 33, No. 35, pg 2285.

The TPDS forms much of the backbone of the National Food Security Act (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>29</sup>.

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 (BPL) households in Rajasthan received access to the TPDS<sup>30</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>31</sup>. Furthermore, concerns have revolved around the feasibility of the NFSA due to its lack of effective enforcement mechanisms<sup>32</sup>.

### 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>33</sup>.

On the face of it, the Aadhaar system can be seen as a tool of distributive justice and equality, as it is designed to financially include the weaker sections of society. 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>34</sup>. However, the system has begun receiving criticism for its 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>35</sup>. In turn, skepticism has surrounded Aadhaar, and its ability to meet its fundamental goals of tackling benefit fraud and poverty.

### The National e-Governance Plan

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<sup>29</sup> Priyam Sengupta & Kakali Mukhopadhyay. (2016). ‘*Economic and Environmental Impact of the National Food Security Act of India.*’ Agricultural and Food Economics Vol 4:5, pg 3

<sup>30</sup> Reetika Khera. (2011). ‘*India’s Public Distribution System. Utilisation and Impact.*’ The Journal of Development Studies Vol 47 Issue 7, pg 1060

<sup>31</sup> Ibid. pg 1054

<sup>32</sup> Priyam Sengupta & Kakali Mukhopadhyay. (2016). ‘*Economic and Environmental Impact of the National Food Security Act of India.*’ Agricultural and Food Economics Vol 4:5, pg 18

<sup>33</sup> Government of India, Unique Identification Authority of India, ‘*About Aadhaar.*’ Online : <https://www.uidai.gov.in/your-aadhaar/about-aadhaar.html>

<sup>34</sup> Bharat Bhatti. (2012). ‘*Aadhaar – Enable Payments for the NREGA workers.*’ Economic and Political Weekly Journal Article Dec Vol 47, No. 49, pg 19. Online : [https://www.jstor.org/stable/41720432?seq=3#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/41720432?seq=3#page_scan_tab_contents)

<sup>35</sup> Soutik Biswas (2018), ‘Aadhaar: Is India’s biometric ID scheme hurting the poor.’ BBC News. Online: <https://www.bbc.com/news/world-asia-india-43207964>

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>36</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>37</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. On one hand, India has not shown encouraging performance with broadband services, bandwidth availability and network coverage<sup>38</sup>. Adding to this issue is that people living in rural communities are yet to gain direct access to the services<sup>39</sup>. This urges for a better strategy to form the basis of communication for all stakeholders.

### The Right to Information Act

India implemented the Right to Information Act (RTI) 2005 as a mechanism to tame corruption. The Act allows citizens to make an application to seek information kept by public authorities. It is aimed at promoting transparency and accountability and adopts the rights-based approach to development. A decade-long experience of the RTI 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 programs such as the MGNREGA<sup>40</sup>. The government has also made a remarkable effort in publicizing the RTI Act and its benefits. In order to improve the current system, more efforts need to go into providing user-guides and procedural details of the RTI process, and further enhancements need to go into providing an effective monitoring mechanism<sup>41</sup>.

## **II. Development and the Baseline Conception of Distributive Justice**

This section develops a baseline theory of distributive justice that can account for structural barriers in India’s specific context, one that is capable of addressing the immediate needs of the poorest and most vulnerable and providing them with a route towards empowerment.

### *A) The Aims of Distributive Justice*

Distributive justice is concerned with the distribution and allocation of common goods and common burdens.<sup>42</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

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<sup>36</sup> Government of India, Ministry of Electronics and Information Technolog, ‘*National e-Governance Plan*’. Online: <http://meity.gov.in/divisions/national-e-governance-plan>

<sup>37</sup> *Ibid.*

<sup>38</sup> Harekrishna Misra. (2012). ‘*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, pg 9

<sup>39</sup> *Ibid.*

<sup>40</sup> B.S. Ghuman & Mohammad Sohail. (2017). ‘*Right to Information Act : 2005 in India : A Decadal Experience,*’ Indian Journal of Public Administration Vol 62, No.2, pg 238

<sup>41</sup> *Ibid.* pg 247

<sup>42</sup> 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>.

activities. Thus, justice arguments are often invoked in connection with minimum wage legislation, Affirmative Action policies, public education, military conscription, litigation, as well as with redistributive policies such as welfare, Medicare, aid to the developing world, progressive income taxes and inheritance taxes.<sup>43</sup> Since the common goods and resources of the community cannot be said to belong to any individual but are to be distributed according to the judgment of what is judged to be in the interests of the common good, a judgment which only the political institutions of the State are fit to pronounce, no individual may claim any personal right to any part of the common stock. The principles of equity, equality, and social need are most relevant in the context of distributive justice.<sup>44</sup>

The idea of a fair distribution of resources is generally linked to concepts of human rights, human dignity, and the common good, and is grounded in what civilization is said to owe its individual members in equal proportion.<sup>45</sup> 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>46</sup>

### B) *Distributive Justice and the Law in India*

The notion of distributive justice, and one argument for integrating this notion into India’s development strategy, can be located within India’s existing legal context.

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 others things, the federal and administrative structure, fundamental rights, and directive principles of state policy.<sup>47</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 has been seen even before the enactment of the Constitution.<sup>48</sup> Many judgements originating from the Public Interest Litigation also strengthened the idea of distributive justice.<sup>49</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>50</sup> or the “Public Trust Doctrine,”<sup>51</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>52</sup> on the concepts of “procedure established by

<sup>43</sup> Distributive Justice (28th September, 2013), myweb.lmu.edu/jkonow/Distributive%20Justice.pdf

<sup>44</sup> Rashmi Raman & Nisha Venkataraman, Grafting Faith- Legal Aid Services in India, 3rd International Conference on Therapeutic Jurisprudence (2006).

<sup>45</sup> Manu Mishra and Udita 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>.

<sup>46</sup> Distributive Justice (27th September, 2013), <http://plato.stanford.edu/entries/justicedistributive>.

<sup>47</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), online: McGill University <[www.mcgill.ca/roled/files/roled/mcgill\\_roled\\_report\\_2012.pdf](http://www.mcgill.ca/roled/files/roled/mcgill_roled_report_2012.pdf)> at 6.

<sup>48</sup> In Re: Llewelyn Evans, AIR 1926 Bom 551; P.K. Tare v. Emperor, AIR 1943 Nagpur 26.

<sup>49</sup> Hussain Ara vs State of Bihar, AIR 1979 SC 1360; M.C. Mehta Vs Union of India, AIR 1988 SC 1037.

<sup>50</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>51</sup> M.C. Mehta v. Kamalnath, (1997) 1 SCC (736); K.M. Chinappa v. UOI, AIR 2003 SC 724.

<sup>52</sup> AIR 1978 SC 597; (1978) 1 SCC 248.

law” and “due process of law” stems heavily from the concept of distributive justice. That case saw a complete shift in the attitude of 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” taking us away from the case of *A.K. Gopalan v. State of Madras*.<sup>53</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>54</sup> Thus, where the question of public good comes and fairness<sup>55</sup> is to be seen, or the need of distribution of the rights and responsibilities come, the Supreme Court has always been in favour of the public, or rather, the public good.

### *C) Theories of Distributive Justice*

In this part, we develop a baseline conception of distributive justice that better accounts for structural barriers in the Indian context and aligns with the SDG agenda. We aim to arrive at baseline conception by considering competing theories and their ability to address structural barriers and institutional features that are particular to India.

#### 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>56</sup>, “welfare”<sup>57</sup>, etc. Economists adopted the concept of utility because it measures quality of life according to people’s reported feelings about their lives, which is something that cannot be understood through GDP or per capita income and spending.<sup>58</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>59</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. 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. In the short story, “The ones who walk away from Omelas” the majority of the townspeople live very comfortably off the backs of a few who suffer greatly.<sup>60</sup> However, one does not need a fictional narrative to entertain such a scenario, and needs to look no further than the inner workings of the garment industry. These examples show 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.

<sup>53</sup> AIR 1950 SC 27.

<sup>54</sup> Constitution of India, Article 141; I.C. Golaknath v. State of Punjab, AIR 1967 SC 164; His Holiness Keshvananda Bharati v. State of Kerala, AIR 1973 SC 1461; S.P. Gupta v. Union of India, 1981 Supp SCC 87.

<sup>55</sup> International Covenant on Civil & Political Rights, Article 14, 1966.

<sup>56</sup> Mill, J. (1861). *Utilitarianism*. London: Fraser’s Magazine.

<sup>57</sup> Arneson, Richard, 1990, “Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare,” *Philosophy and Public Affairs*, 19: 158–194.

<sup>58</sup> Report by the Commission on the Measurement of Economic Performance and Social Progress (online): <http://ec.europa.eu/eurostat/documents/118025/118123/Fitoussi+Commission+report>; Dworkin, Ronald, 1981, “What is Equality? Part 1: Equality of Resources,” *Philosophy and Public Affairs*, 10: 185–246 at 189.

<sup>59</sup> Parfit, Derek (1984), *Reasons and Persons*. Oxford University Press at Appendix I.

<sup>60</sup> Le Guin, U. (1993). *The ones who walk away from Omelas*.

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>61</sup> Humans have different values and needs that are informed by their interests, aspirations, priorities, physical and mental dimensions, etc. 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 a delicious meal 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>62</sup>

### 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>63</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>64</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>65</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 theory would 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>66</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 distribution 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>67</sup> In his view, the resource theorist

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<sup>61</sup> Martha Nussbaum, 2011, *Creating Capabilities*, Cambridge, MA: Harvard University Press at p. 105-6

<sup>62</sup> *Ibid* at 106.

<sup>63</sup> *Ibid* at 113.

<sup>64</sup> See Dworkin, Ronald, 1981, “What is Equality? Part 1: Equality of Resources,” *Philosophy and Public Affairs*, 10: 185–246

<sup>65</sup> Martha Nussbaum, 2011, *Creating Capabilities*, Cambridge, MA: Harvard University Press at p. 114

<sup>66</sup> *Ibid* at 115.

<sup>67</sup> Sen, Amartya. "Equality of What?" *The Tanner Lecture on Human Value* (1979): 197-220 at p. 216.

is guilty of fetishizing goods and neglecting to consider “what goods do for persons” and “what persons can do with goods”.<sup>68</sup>

### The Capabilities Approach

The capabilities approach begins its inquiry by focusing on the way peoples’ lives are go 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>69</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>70</sup> The capabilities approach to development places moral importance on the process of i) enhancing a person’s set of basic capabilities or opportunities that are important to a dignified human life (control over one’s health, environment, etc.), and ii) granting individuals the freedom to make what they want out of this set of basic capabilities.<sup>71</sup> As echoed in this process, the capabilities approach recognizes the intrinsic importance that individual freedom has on one’s quality of life.<sup>72</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 etc.), which are left unaddressed by the resource theorist.

### Criticisms of existing distributive justice theories

Elizabeth Anderson has criticized the debates in distributive justice for focusing too heavily on the distribution of individual shares.<sup>73</sup> On Anderson’s view, we should instead be focusing on creating social and distributive arrangements that promote a society of individuals who relate to one another as equals.<sup>74</sup> Equality of resources fails to achieve relational equality because it cannot adequately address discrimination and other social barriers. Utilitarianism also fails because it can treat people 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>75</sup> Affiliation, like relational equality, captures the social foundations for engaging in equal relations with others (respect, non-discrimination, reciprocity, etc.), and also promotes institutions that are critical for fostering an environment where individuals have equal rights and duties.<sup>76</sup>

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 not a theory of justice

<sup>68</sup> Cohen, G. A., 1989, “On the Currency of Egalitarian Justice,” *Ethics* 99, pp. 906–944 at p.943–4.

<sup>69</sup> Martha Nussbaum, 2011, *Creating Capabilities*, Cambridge, MA: Harvard University Press at p. 51-2

<sup>70</sup> Ingrid Robeyns, "The Capability Approach." *Stanford Encyclopedia of Philosophy* (08 Apr. 2017) online: <<https://plato.stanford.edu/entries/capability-approach/>>.

<sup>71</sup> Sandra Tinajero and Giulia Sinatti. *Migration for Development: A Bottom-Up Approach*, (Joint Migration and Development Initiative) at 22.

<sup>72</sup> Mathias Risse, *Human Development Research Paper 2009/34: Immigration, Ethics and Capabilities Approach*. (UNDP, 2999) at 2-3.

<sup>73</sup> Anderson, Elizabeth. "What Is the Point of Equality?" *Ethics* (1999): 287-337 at 314-16; Also see: Young, Iris Marion, 1990, *Justice and the Politics of Difference*, Princeton: Princeton University Press.

<sup>74</sup> *Ibid.*

<sup>75</sup> Nussbaum, Martha. "Chapter 14: Human Dignity and Political Entitlements.", (10 Apr. 2017) online: <[https://bioethicsarchive.georgetown.edu/pcbe/reports/human\\_dignity/chapter14.html](https://bioethicsarchive.georgetown.edu/pcbe/reports/human_dignity/chapter14.html)>;

<sup>76</sup> Nussbaum, Martha (2011). *Creating Capabilities: The Human Development Approach*. Cambridge, MA: Harvard University Press. pp. 33–34.

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>77</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>78</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. While the arguments launched against Nussbaum pertain to her entire set of central capabilities, some of the capabilities listed are less culturally-specific than others. Capabilities such as bodily health or education enable people to pursue what they have reason to value; they are seen as necessary for a dignified life rather than an imposition. 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.

### III. Institutional Reform, the Baseline Conception and the 2030 Agenda

This part analyzes 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 the 2030 Agenda. 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 a 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 this reason, there is a need to improve governance mechanisms in response to corruption, poverty and inequality in India.

#### A) *The SDGs and a Credible Commitment*

To create a new, individual-centered development agenda, a series of global consultations were conducted with civil society organizations, citizens, scientists, academics, and private sectors from around the world.<sup>79</sup> The SDGs include 17 goals and 169 targets.<sup>80</sup> The 17 goals

<sup>77</sup> Thomas Pogge. (2002) “Can the Capability Approach Be Justified?” *Philosophical Topics* 30 (2): 167–228.

<sup>78</sup> Susan Moller Okin. (2003) “Poverty, Well-Being, and Gender: What Counts, Who’s Heard?” *Philosophy and Public Affairs* 31 (3): 280-316; Frances Stewart. 2001. Book Review “Women and Human Development: The Capabilities Approach, by Martha Nussbaum” *Journal of International Development* 13 (8): 1191-1192.

<sup>79</sup> Preamble to ‘*Transforming our world : the 2030 Agenda for Sustainable Development*’, Sustainable Development Knowledge Platform. Online : <https://sustainabledevelopment.un.org/post2015/transformingourworld>

<sup>80</sup> UN General assembly. 69<sup>th</sup> Session. Agenda Item 13(a). Available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E\\_](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E_).

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 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>81</sup> They reflect continuity and consolidation of MDGs while making these more sustainable by strengthening environmental goals.<sup>82</sup>

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 are 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>83</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>84</sup>. The NITI Aayog oversees the SDG implementation and monitors each state’s performance.

The state has made a tangible commitments to meeting targets with the aim of dramatically improving human development indicators which has not been commensurate with the rate of economic growth in India. The focus on health, education, food security, access to potable water and sanitation is well aligned with goal of strengthening capabilities of people<sup>85</sup>.

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>86</sup>. India also plans to completely immunize 90% of newborn babies by 2025<sup>87</sup>, and to achieve the global target of 90:90:90 for HIV/AIDS by 2020<sup>88</sup>. The NITI Aayog is tasked with the Health Index initiative<sup>89</sup> as well as

<sup>81</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>

<sup>82</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>

<sup>83</sup> Report by the Government of India, National Institute of Transforming India (NITI) Aayog, ‘Health’ (2018). Online : <http://social.niti.gov.in/health-index>

<sup>84</sup> The Government of India .(2017). ‘Overview’. The Government of India, The National Institution of Tranforming India (NITI) Aayog, Online: <http://www.niti.gov.in/content/overview>

<sup>85</sup> Ingrid Robeyns, "The Capability Approach." Stanford Encyclopedia of Philosophy (08 Apr. 2017) online: <<https://plato.stanford.edu/entries/capability-approach/>>. ; see also Martha Nussbaum, 2011, ‘Creating Capabilities’, Cambridge, MA: Harvard University Press at p. 69; Jean Dréze & Amartya Sen, ‘Hunger and Public Action’ (New York : Oxford University Press, 1989) pg 46,

<sup>86</sup> Report by the United Nations High Level Political Forum, ‘Voluntary National Review Report on Implementation of Sustainable Development Goals’ (2017), pg 24. Online [http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Executive summary by the National Institution for Tranforming India (Government of India), online: [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), pg 2

with monitoring each state’s performance on specific health indicators<sup>90</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>91</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. 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>92</sup>.

India’s National Education Mission focuses on providing universal elementary education to all children<sup>93</sup>. The mission aims to bridge gender-related inequalities and improve the learning outcomes of children. The Right to Education Act ensures that children between the ages of 6 to 14 are given free, equitable and compulsory education<sup>94</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 the 55.1% in 2005-2006<sup>95</sup>. Furthermore, 53% of women were independently using savings account in 2015-2016, a stark improvement from the 15.1% in 2005-2006<sup>96</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>97</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>98</sup>. India has pledged to achieve universal and equitable access to safe and affordable drinking water by 2030<sup>99</sup>. The National Rural Drinking Water Programme has provided 77% of rural habitations with 40 liters of drinking water per capital, on a daily basis<sup>100</sup>. India has also initiated the Swachh Bharat Abhiyaan (Clean India Movement) to ensure that India is free from open defecation by 2019<sup>101</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>102</sup>.

<sup>90</sup> Report by the Government of India, National Institute of Transforming India (NITI) Aayog, ‘Health’ (2018). Online : <http://social.niti.gov.in/health-index>

<sup>91</sup> Report by the United Nations High Level Political Forum, ‘Voluntary National Review Report on Implementation of Sustainable Development Goals’ (2017), pg 11. Online [http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)

<sup>92</sup> United Nations. (2017). ‘India : Voluntary National Review 2017,’ Sustainable Development Knowledge Platform. Online : <https://sustainabledevelopment.un.org/memberstates/india>

<sup>93</sup> Report by the United Nations High Level Political Forum, ‘Voluntary National Review Report on Implementation of Sustainable Development Goals’ (2017), pg 9. Online [http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)

<sup>94</sup> Ibid.

<sup>95</sup> Ibid at pg. 19

<sup>96</sup> Ibid.

<sup>97</sup> United Nations. (2017). ‘India : Voluntary National Review 2017,’ Sustainable Development Knowledge Platform. Online : <https://sustainabledevelopment.un.org/memberstates/india>

<sup>98</sup> Ibid.

<sup>99</sup> Government of India (2017). ‘Sustainable Development Goals (SDGs) Targets, CSS, Interventions, Nodal and other Ministries.’ NITI Ayog, Development of Monitoring and Evaluation Office. Pg 10

<sup>100</sup> United Nations. (2017). ‘India : Voluntary National Review 2017,’ Sustainable Development Knowledge Platform. Online : <https://sustainabledevelopment.un.org/memberstates/india>

<sup>101</sup> Report by the United Nations High Level Political Forum, ‘Voluntary National Review Report on Implementation of Sustainable Development Goals’ (2017), pg 9. Online [http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)

<sup>102</sup> United Nations. (2017). ‘India : Voluntary National Review 2017,’ Sustainable Development Knowledge Platform. Online : <https://sustainabledevelopment.un.org/memberstates/india>

### B) Institutions and Distributive Justice

In this paper, 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>103</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 diversification into manufacturing.<sup>104</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>105</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>106</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 focusing on macroeconomic stability, liberalization, and openness—it is a process that involves deeper institutional transformation measured in decades, not years. Laws and regulations can be rewritten<sup>107</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>108</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>109</sup> Correspondingly, framing potential growth in terms of investment climate, Goldman Sachs suggests that investors “may need to look deeper under the surface of the macro landscape and discriminate more if they are to earn above-average returns from understanding this dynamic.”<sup>110</sup>

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

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<sup>103</sup> Douglass North, *Structure and Change in Economic History* (New York: Norton, 1981) at 201-2. See for comparison Edward L Glaeser et al., “Do Institutions Cause Growth?” (2004) 3 *Journal of Economic Growth* 9. The authors argue that property rights do not constrain actors, they result from other institutions or policy choices.

<sup>104</sup> Dani Rodrik, “The Future of Economic Convergence” (2011) NBER Working Paper no 17400 at 6.

<sup>105</sup> Margaret S Mcmillan & Dani Rodrik, *Globalization, Structural Change and Productivity Growth*, NBER Working Paper No 17143 (National Bureau of Economic Research, 2011).

<sup>106</sup> Barry Bosworth et al, *Sources of Growth in the Indian Economy*, NBER Working Paper No 12901 (National Bureau of Economic Research, 2007).

<sup>107</sup> Arvind Subramanian, ‘*India’s Path from Crony Socialism to Stigmatized Capitalism*’ Project Syndicate (2018). Online: <https://www.project-syndicate.org/commentary/india-cronyism-to-capitalism-by-arvind-subramanian-2018-02?barrier=accesspay>

<sup>108</sup> Dani Rodrik, “The Future of Economic Convergence” (2011) NBER Working Paper no 17400 at 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” (2002) 50:1 *The American Journal of Comparative Law*.

<sup>109</sup> Daron Acemoglu & James Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (New York: Crown Business, 2012).

<sup>110</sup> Dominic Wilson et al, *The BRICs 10 Years On: Halfway Through The Great Transformation*, Global Economics Paper No. 208 (Goldman Sachs Global Economics, Commodities and Strategy Research, 2011).

economic activity, such as legal regulations, rights and freedoms, and infrastructure.<sup>111</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>112</sup>

Institutions play a more significant role in the development outcomes of states than many other factors.<sup>113</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>114</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>115</sup> Similarly, once institutions are controlled for, trade is almost always insignificant, although it too has a positive effect on institutional quality.<sup>116</sup> Their results demonstrate that the quality of institutions overrides other relevant factors.

### *C) The Baseline Conception and the Achievement of the SDGs*

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

First, some of the SDGs that have been costed show that the cost to states of attaining the SDGs will be massive.<sup>117</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>118</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 July, failed to ease concerns that there will not be enough funds to meet the aspirational nature of the goals.<sup>119</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>120 121</sup>

Second, India will need to decide how progress towards the SDGs will be measured.<sup>122</sup> A number of targets in the SDGs are not quantified. The indicators for measuring progress have

<sup>111</sup> Mark Casson et al, “Formal and Informal Institutions and Development” (2010) 38:2 World Development 137 at 137.

<sup>112</sup> Svetozar Pejovich, “The Effects of the Interaction of Formal and Informal Institutions on Social Stability and Economic Development” (1999) 2:2 Journal of Markets & Morality 164 at 165.

<sup>113</sup> Daron Acemoglu & James A Robinson, *Why Nations Fail: the Origins of Power, Prosperity and Poverty* (New York: Crown Business, 2012).

<sup>114</sup> Dani Rodrik et al, “Institutions Rule: the Primacy of Institutions over Geography and Integration in Economic Development” (2002) NBER Working Paper, no 9305.

<sup>115</sup> Jared M Diamond, *Guns, Germs, and Steel: the Fates of Human Societies* (New York: Norton, 2005); John Gallup et al, “Geography and Economic Development” (1998) NBER Working Paper No 6846; Jeffrey D Sachs, “Tropical Underdevelopment” (2001) NBER Working Paper No W8119.

<sup>116</sup> Jeffrey A Frankel & David Romer, “Does Trade Cause Growth?” (1999) 89:3 The American Economic Review; Jeffrey D Sachs et al, “Economic Reform and the Process of Global Integration” (1995) *Brookings Papers on Economic Activity 1995*, No 1. Sachs emphasizes the role of international trade as a driver of productivity change and fostering economic convergence across countries.

<sup>117</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>

<sup>118</sup> Report of the Intergovernmental Committee of Experts on Sustainable Development Financing 2014. Available from: <https://sustainabledevelopmentun.org/content/documents/4588FINAL%20REPORT%20ICESDF.pdf>

<sup>119</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>

<sup>120</sup> Speech by Jim Yong Kim, President World Bank at UNGA on 25 Sept 2015. Available

from: <http://www.worldbank.org/en/news/speech/2015/09/25/speech-united-nations-generalassembly>.

<sup>121</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>

<sup>122</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>

not yet been identified. Even if they limit to two indicators per target there will be 338 indicators to monitor and report. “Having 169 targets is like having no targets at all.”<sup>123</sup> Measurability will depend on the availability of data and capacity to measure them.<sup>124</sup>

Third, 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>125</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>126</sup>.

Fourth, 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>127</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>128</sup> Most of the charges facing these MPs are for serious crimes, including murder, kidnapping and crimes against women.<sup>129</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>130</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>131</sup>

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>132</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. India ranked 135<sup>th</sup> out of 187 countries in the 2014 UNDP Human Development Index<sup>133</sup>. In 2015, the country

<sup>123</sup> New York: The Economist; 2015. [Last accessed on 2015 Nov 20]. 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-worldshould-set-itself-2030>

<sup>124</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>

<sup>125</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4746946/>

<sup>126</sup> Report by the United Nations High Level Political Forum, ‘*Voluntary National Review Report on Implementation of Sustainable Development Goals*’ (2017), pg 30. Online [http://niti.gov.in/writereaddata/files/Final\\_VNR\\_report.pdf](http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf)

<sup>127</sup> <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-UKFaWnMeVYXCED03AZdGP.html>

<sup>128</sup> <https://www.economist.com/books-and-arts/2017/02/04/why-many-indian-politicians-have-a-criminal-record>

<sup>129</sup> Charlotte Alfred, ‘*India’s New Parliament has the most members facing criminal charges*’ Huffpost (2014) Online : [https://www.huffingtonpost.ca/entry/india-parliament-criminal-charges\\_n\\_5365225](https://www.huffingtonpost.ca/entry/india-parliament-criminal-charges_n_5365225)

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Nandini Ramanujam, Mara Verna, Julia Betts, Kuzi Charamba & Marcas Moore. (2012). ‘*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, pg 21.

<sup>133</sup> United National Development Program. (2014) ‘*2014 Human Development Report*.’ Online : <http://www.undp.org/content/undp/en/home/presscenter/events/2014/july/HDR2014.html>

had the second-highest estimated number of undernourished people<sup>134</sup> and ranked 55<sup>th</sup> out of 76 countries in the Global Hunger Index<sup>135</sup>. This begs us to question where the faults lie in India’s development.

One major issue lies in the design of the MDGs. The targets-based approach is arguably unachievable and simplistic<sup>136</sup>, and does not adapt to country-specific needs, let alone the disparities between regions, genders and social structures<sup>137</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>138</sup>.

The MDGs were in many ways 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 Sustainable Development Goals (SDGs) are in many ways a step in the right direction. They go further in creating additional targets that directly link to distributive justice and include discussions on how to better divide development costs and benefits among populations and individuals<sup>139</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. We suggest that SDGs are best achieved by enhancing people’s capabilities or real opportunities to pursue what they have reason to do and value. The capabilities approach provides a necessary alternative to theories as it considers the complexities tied to human needs and aspirations before designing distributive principles and models. This discussion raises the important point that it is ill-fitting for our purposes to develop a baseline conception of distributive justice that assumes full compliance with abstract principles of justice. This is also 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 barriers in accessing education or gaining employment due to gender discrimination.<sup>140</sup> In the “Idea of Justice”, Sen argues that “Justice is ultimately connected with the way people’s lives go, and not merely with the nature of the institutions surrounding them”.

The fulfillment of SDGs will require us to think not only about distributive models, but also about social arrangements that ensure people are considered as equal in a relational sense. For example, relational equality seems to be at the basis of SDG 5 (Gender Equality), which will

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<sup>134</sup> A report by the Food and Agriculture Organisation of the United Nations, the International Fund for Agricultural Development and the World Food Programme. (2015). ‘*The State of Food Insecurity in the World*,’ pg 19. Online : <http://www.fao.org/3/a-i4646e.pdf>

<sup>135</sup> Priyam Sengupta & Kakali Mukhopadhyay. (2016). ‘*Economic and Environmental Impact of the National Food Security Act of India*.’ Agricultural and Food Economics Vol 4:5, pg 2

<sup>136</sup> Maya Fehling, Brett Nelson & Sridhar Venkatapuram. (2013). ‘*Limitations of the Millenium Development Goals: A literature Review*.’ Global Public Health Vol 8, No. 10, pg 1110

<sup>137</sup> Suman Kannoujia. (2016). *Inclusive and Sustainable growth in India – Issues and Challenges*. International Journal of Applied Research Vol 2, No8 pg. 582

<sup>138</sup> *Ibid* pg. 581

<sup>139</sup> Rita Vasconcellos Oliveira. (2017). ‘*Back to the future : The potential of intergenerational justice for the achievement of the sustainable development goals*.’ MPDI : Sustainability Journal, Vol 10, pg 432

<sup>140</sup> *Ibid* at 16-42.

require both a financial commitment as well as social, attitudinal, and legal changes surrounding gender diversity and inclusivity.

## **Conclusion**

The SDGs present a real opportunity to direct India towards a path of equality and equity. In this paper, we have posited that India’s plans to achieve previous development targets, particularly the MDGs, have faltered because reforms designed to alleviate poverty and achieve equitable growth failed to address weaknesses in the institutions that exist to oversee the execution and accountability needed for such reforms to succeed. In doing so, problems such as weak and changing political will and agenda, poor accountability mechanisms, weak enforcement mechanisms and corruption have not been sufficiently addressed. As the nation shifts its attention on the SDGs, this renewed commitment to institutional reforms presents tremendous potential for the state to address human development concerns, which we argue must incorporate a focus on distributive justice.