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'Norms-Rights Transition Process'  
Through Public Action**

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# **Development as a 'Norms-Rights Transition Process' Through Public Action**

**Vijayamohanan Pillai N.**

## **Abstract**

The present paper has constituted the background source for a number of studies; it sets out to build up an interpretation of the conception of poverty in its multidimensional existence within the framework of human rights, human development and decentralization. Here we discuss the various implications of the links and linkages among human rights, freedom and development to develop a theoretical framework. Within this, we start from the original conception of poverty in terms of *minimum rights* to resources, by which people are seen as entitled, as citizens, to a minimum income. This is then extended to the comprehensive conception of development as freedom, *a la* AK Sen, approaching poverty in terms of right to freedom. We argue that political freedom has substantial linkages towards social and economic freedom, all together constituting development, seen as 'removal of major sources of unfreedom' of both income and non-income dimensions. In the hard core constitution of development/poverty, seen in terms of the most basic human right to life, the former (income dimension) specifies the right to resources, and thus to employment guarantee, while the latter signifies the right to building up human capital by means especially of health and education. Here we delineate the dynamic sequence of development as entitlement→ access→ freedom. This highlights the significance of the role of the state in opening up opportunities, that is, creating capabilities. Here individual freedom is taken up as a social commitment. we argue that community participation in development process through decentralisation of state power and functionings constitutes an autonomous and hence ideal means of targeting and tackling development issues through co-operatives. This in turn implies that the degree of decentralisation of power of a state is an indicator of its concern for and commitment to human development. This all the more becomes pertinent in the context of liberalisation drives by a state in its teleological transformation of role reduction. And the liberalisation drives by the concerned state thus imply a human rights violation.

# Development as a 'Norms-Rights Transition Process' Through Public Action

Vijayamohanan Pillai N.

प्रजासुखे सुखं राजः प्रजानां च हिते हितम् ।  
नात्मप्रियं हितं राजः प्रजानां तु प्रियं हितम् ॥

– Kautilya's *Arthashastra*<sup>1</sup>

## 1. Introduction

The present study, with the objective of building up an interpretation of the conception of poverty in its multidimensional existence within the framework of human rights, human development and decentralization, has constituted the theoretical framework for a number of papers (see Pillai 2004 a and b, 2005; Kannan and Pillai 2005, 2007, 2009).

In this background paper we discuss the various implications of the links and linkages among human rights, freedom and development to develop a theoretical framework. Within this, we start from the original conception of poverty in terms of *minimum rights* to resources, by which people are seen as entitled, as citizens, to a minimum income. This is then extended to the

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<sup>1</sup> In the happiness of his subjects lies the king's happiness; in their welfare his welfare. He shall not deem as good only that which pleases him, but treat as beneficial to him whatever pleases his subjects.

comprehensive conception of development as freedom, *a la* AK Sen, approaching poverty in terms of right to freedom. We argue that political freedom has substantial linkages towards social and economic freedom, all together constituting development, seen as ‘removal of major sources of unfreedom’ of both income and non-income dimensions. In the hard core constitution of development/poverty, seen in terms of the most basic human right to life, the former (income dimension) specifies the right to resources, and thus to employment guarantee, while the latter signifies the right to building up human capital by means especially of health and education. Here we delineate the dynamic sequence of development as entitlement→ access→ freedom. This highlights the significance of the role of the state in opening up opportunities, that is, creating capabilities. Here individual freedom is taken up as a social commitment. we argue that community participation in development process through decentralisation of state power and functionings constitutes an autonomous and hence ideal means of targeting and tackling development issues through co-operatives. This in turn implies that the degree of decentralisation of power of a state is an indicator of its concern for and commitment to human development. This all the more becomes pertinent in the context of liberalisation drives by a state in its teleological transformation of role reduction. And the liberalisation drives by the concerned state thus imply a human rights violation.

## **2. Poverty in the Human Development Perspective**

### **2.1. Human Rights**

We start with human rights. Human rights, conceived as belonging to the individual under natural law as a consequence of her being human<sup>2</sup> and social animal, have as the main source of

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<sup>2</sup> The original definition of human rights is in relation to only human being, and this seems to imply a theological stand that people are born with rights, that human rights are inherent in human beings and hence are few and abstract. So were John Locke's rights to life, liberty, and property (Locke 1690). Again, the US Declaration of Independence (1776) claims that people are “endowed by their Creator” with natural rights to “life, liberty, and the pursuit of happiness.” Hence the consideration in our definition of his being a social animal that offers more space for the contemporary conception of human rights which are more numerous and specific to his being both human and social.

their contemporary conception the Universal Declaration of Human Rights (UDHR; United Nations, 1948) and the many human rights documents and treaties that have followed in its wake. From the list of more than two dozen specific human rights that the UDHR sets out for the countries to respect and protect, we may group the following six families of rights: *security rights* that protect people against crimes such as murder, massacre, torture, and rape; *liberty rights* that protect people's freedoms in areas such as belief, expression, association, assembly, and movement; *political rights* that protect people's liberty to participate in politics through actions such as communication, assembly, protesting, voting, and serving in public office; *due process rights* that protect people against abuses of the legal system such as imprisonment without trial, secret trials, and excessive punishments; *equality rights* that guarantee equal citizenship, equality before the law, and non-discrimination; and *welfare rights* (or 'economic and social rights') that require protections against severe poverty and starvation and provision of education to all children.

Abstracting from the philosophical, ethical and legal complexities of interpreting diverse aspects of human rights, we seek to concentrate only on the questions as to which rights are human rights. This question is answered by considering the historical development of what are called 'civil rights'. The very term 'civil rights' reminds one of the Civil Rights Movement for free and equal citizenship of American blacks during the late 1950s and 1960s. Civil rights are the basic legal rights that constitute the status of free and equal citizenship and include personal, political, and economic rights an individual must possess in order to have such a status.

Among the historical sources of these rights, the most famous and influential inspiration came from the English Magna Carta (1215). Despite its feudal assertion for selfish interests, some of its provisions, including the famous clause 39 asserting the 'rights of free men', gave expression to the idea of individual freedom and became the symbol of this freedom for the future generations. In a way this light led to the 'immemorial rights of Englishmen' that were successfully fought for in the 17<sup>th</sup> century England through the Petition of Right (1628) and the Bill of Rights (1689). The rights enshrined in these instruments reappeared in the historic bills of rights such as the American Declaration of Independence (1776), the Virginia Declaration of

Rights (1776), and the United States Bill of Rights (1791, with subsequent amendments). The French Declaration of the Rights of Man and of the Citizen (1789) was directly influenced by the earlier American examples. On the other hand, in the contemporary set of civil rights one might find the first 21 articles of the UDHR, and the treaties such as the European Convention on Human Rights (ECHR; Council of Europe 1950), the the International Covenant on Civil and Political Rights (ICCPR; Human Rights Committee 1966), the American Convention on Human Rights, and the African Convention on Human Rights.

Until the middle of the 20<sup>th</sup> century, civil rights had generally been separated from ‘political rights’ on gender basis. The former had represented the rights to own property, make and enforce contracts, receive due process of law, and worship one's religion, as well as the freedom of speech and the press (Amar 1998: 216-17). But the political rights, such as right to hold public office, vote, or testify in court, had been reserved to adult males only. However, the ideology that had classified women as inferior citizens could not survive the cogency of the principle that all citizens of a liberal democracy were entitled to ‘a fully adequate scheme of equal basic liberties’ (Rawls 2001: 42), and soon broke down.

### *Three Generations of Rights*

On the question of which rights constitute civil rights there is now a consensus in terms of ‘three generations’ of civil rights claims (Wellman 1999). The pre-20<sup>th</sup> century set of civil (*and* political) rights as, for example, given above, which the American civil rights movement in fact initially fought for, represent the first generation of civil rights claims. The space of this set of rights, however, was soon identified to be too narrow to define the scope of free and equal citizenship. The actual realisation of free and equal citizenship was recognised to presuppose honouring of an additional vector of rights: the second generation of economic and social rights (‘welfare rights’), including rights to food, shelter, medical care, and employment.<sup>3</sup> These rights

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<sup>3</sup> The ICESCR's list of economic and social rights includes nondiscrimination and equality for women in the economic and social area (Articles 2 and 3), freedom to work and opportunities to work (Article 4), fair pay and decent conditions of work (Article 7), the right to form trade unions and to strike (Article 8), social security (Article 9), special protections for mothers and children (Article 10), the right to adequate food, clothing, and housing

have been made part of international law by treaties such as the European Social Charter, the ICCPR, the ICESCR, and the Protocol of San Salvador (1988), which amended the American Convention on Human Rights.

Despite a few notes of dissent (Cranston 1967; see Beetham 1995), there is now an increasingly dominant view that the welfare rights *are* a part of the set of rights constitutive of free and equal citizenship (Marshall 1965; Waldron 1993; Sunstein 2001). This is evident also from the fact that welfare rights are protected as a matter of constitutional principle in a number of democracies. For example, the Constitution of India has the following, among others, Directive Principles of state policy:<sup>4</sup>

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

Article 39: The state shall direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood.

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(Article 11), the right to basic health services (Article 12), the right to education (Article 13), and the right to participate in cultural life and scientific progress (Article 15).

<sup>4</sup> The Article 11 of the International Covenant on Economic, Social, and Cultural Rights (Committee on Economic, Social and Cultural Rights 1966) provides:

1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.



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

The third generation of rights claims are those broadly termed as ‘cultural rights’, including language rights for members of cultural minorities and the rights of indigenous peoples to preserve their cultural institutions and practices and to exercise some measure of political autonomy.<sup>5</sup>

### *Rights or Norms?*

Despite their significance in the definitional scope of civil rights as constitutive of free and equal citizenship, economic and social rights are often represented as statements of desirable goals, not as real ‘rights’. That is, they are treated as largely aspirational rather than as imposing immediate duties. For instance, the European Convention on Human Rights (ECHR; Council of Europe 1950) chose to exclude these rights and put them into a separate treaty, the European Social Charter (Council of Europe 1961).<sup>6</sup> The United Nations followed suit at the time of its processing the UDHR into international law, by putting them in a separate treaty, the ICESCR (UN, 1966), with the premise that these rights are ones to be progressively realised,<sup>7</sup>

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<sup>5</sup> For example, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) provides:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Similarly, the Canadian Charter of Rights and Freedoms protects the language rights of minorities and section 27 provides that “This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” In the United States, there is no analogous protection of language rights or multiculturalism, although constitutional doctrine does recognise native Indian tribes as “domestic dependent nations” with some attributes of political self-rule, such as sovereign immunity (Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe).

<sup>6</sup> The ECHR was later amended to include the right to education.

<sup>7</sup> Thus article 2 of the International Covenant on Economic, Social, and Cultural Rights (United Nations 1966), which covers rights to basic human needs such as food, clothing, housing, and education, commits its signatories to “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving *progressively* the full realization of the rights

rather than immediately binding. This seemingly unusual step was taken in view, we feel, of the fact that most of the countries were (and still are) incapable, in terms of economic, institutional, and human resources, of taking up the duties to realise these rights.

This situation has in turn facilitated the familiar objections to welfare rights to deny them the status of human rights. The main objections in general seek to show that the welfare rights do not serve truly fundamental interests (Beetham 1995). It goes without saying that this argument is unfounded. The most basic of the welfare rights are: the right to an adequate standard of living, the right to primary health care, and the right to public education. These three rights are of fundamental interests, because “they are closely related to the right to life – the most basic of all human rights. Food is essential for survival; primary health care is indispensable as a minimum requirement for living without illness, at least in the early years; and primary education is necessary for the mental development of a young person to be able to grow up as a full individual.” (UN 1999: Paragraph 34). A people free from hunger, morbidity and ignorance can go a long way towards participating fully and effectively in the political and economic life of the nation – thus the right to life is fundamental.

Another objection centres on the burden of costs involved in honouring the welfare rights (*ibid.*). In fact this is so with each of the other human rights also. For example, guaranteeing liberty rights in turn involves substantial costs of security and due process – that is, on law and criminal justice. There are, on the other hand, viable processes that ensure welfare rights in cost-effective terms. For example, the right to an adequate standard of living may be so interpreted as involving mechanisms that help people provide the concerned ‘welfare goods’ for themselves and their families. The mechanism in this respect for sustaining an adequate standard of living entails income security, which in turn implies job security, for the people. This requires expansion of the economic base, which by no means is non-productive. Similarly, providing for facilities of primary health and public education is in fact an investment in human-social capital with an efficiency dimension. Thus viewed, honouring the right to life promises substantial returns.

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recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” (emphasis added).

### *A 'Norms-Rights Transition Process'*

Human rights, as they emerge in relation to an individual's being human and social being, are specific and problem-oriented. The latter nature (problem-orientation) tends to expand the list of human rights along with the scope of human-social interaction, and its possible abuses result in a 'human rights inflation', the devaluation of human rights due to too much 'bad' human rights currency (Cranston 1973, Wellman 1999, Griffin 2001). This also complicates the process of deciding which norms be counted as human rights. A feasible procedure, in our opinion, is to take up the set of human rights in a perspective of 'norms-rights transition process': norms are progressively realised on a time-bound priority basis to form an ever-expanding set of rights. The analogy from the conception of generations of rights is worth exploring here. We find from historical experiences that political rights make up the most basic subset of human rights. A conducive atmosphere of civil and political freedom (the first generation of rights having been realised) is the precondition for considering and consummating further generations of rights of the citizens. That political freedom precedes economic freedom is a living empirical fact as experiences of not only the affluent countries of Europe and America but also the poor but broadly democratic nations such as India and Botswana in averting major famine<sup>8</sup> illustrate. Kerala's development experience also is an instance of significance here, as we will see below.

### *State Obligations: Welfare State*

Among the welfare rights, the most basic are the rights to life: the right to an adequate standard of living, the right to primary health care, and the right to public education. As we have already shown, these are fundamental to the fruitful realisation of the already guaranteed civil (and political) rights. The only valid objection to their inclusion in the set of human rights derives justification from the apparent unfeasibility on the part of the concerned governments. As the human rights, it should be noted, are because of the consequences of an individual's being human and social, they are claims on the humanity and society; and this defines the *addressees*

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<sup>8</sup> See Sen (1999a and 1999b).

who are assigned duties or responsibilities. Since the state epitomises the humanity and society of a people, it becomes the duty of the state (in terms of the concerned government) to address itself to the interests of the right-holders whom it represents. In contrast to this interpretation of rights as balanced by the ‘Kantian “perfect obligations”’ on the part of an addressee, here the state, there is a widely held view in terms of the ‘Kantian “imperfect obligations”’ (for example, Sen 1999a; 2000), whereby the “claims are addressed generally to anyone who can help” (Sen 1999a: 230). In our view, these two approaches are to be seen complementary and are context-dependent, as history shows.

In primitive societies, the deprived were provided for by the families and communities. In different historical stages, as other relationship patterns developed, such as master-slave, lord-serf and master-servant, the welfare responsibility of the subordinate was increasingly tied to his superior as well as to the group to which the individual belonged. With the commercial and industrial revolutions, the conception of welfare provision also underwent changes. With the division of the society into distinct antagonistic classes of workers and capitalists, there emerged conflicting philosophies as to the functions of the state and responsibility of employers and individuals. The most appealing and hence with potential threat were of the socialists. Largely inspired by them, the working class solidarity successfully fought for its due share of some of the indispensable rights. The state, in addition to its being an agency to facilitate accumulation, had another basic but contradictory function of legitimation: maintaining the conditions for social harmony, which necessitated increasing assumption of welfarism by the state (O’Connor 1973). Thus by the end of the 19<sup>th</sup> century, there appeared in much of Europe and in the US, an acceptance of a mode of public responsibility for welfare provision, conditioned of course by a philosophy of individual responsibility. The German prototypes of social security provisions in the 1880s and *Wohlfahrtsstaat* in the 1920s were in fact the results of attempts to attach the workers to the state. The miraculous growth of the Soviet system and the granting of welfare rights (the rights to education, to work, to rest and leisure, to provision in old age, and to aid in sickness and disability) by the Constitution of the USSR in 1936 further contributed to the genesis of welfare state as an effective counter to the socialist threat. Stephens (1979) and Therborn (1984) have well documented the correlation between labour movement strength and national and temporal variations in social expenditure.

And naturally, as the socialist threat subsided with the fall of the Second World, the significance of the welfare state has also begun to wane. Thus doubts have loomed large over the feasibility and sustainability of welfare rights, in attempts to absolve the state of its “perfect obligations”, and to raise an alternative platform of “imperfect obligations”. We feel, however, that the fundamental legitimation function of the state still stands, and the process of its neglect, as argued by Galbraith (1998), though in another context, is likely to result, beyond a certain indefinable threshold, in a loss of community and social coherence. The state must there be to honour welfare rights, backed of course by the individual and group obligations, as usual.

In the context of the conception of perfect obligations, entailing state intervention, it is worth considering the distinction between negative and positive rights. Positive rights are suggestive of some correlative duties on the part of the addressee to *do* something, such as protecting and providing for. Negative rights, on the other hand, imply *absence of intentional coercion*, that is, the correlative duties just require states to refrain from intervention. This view contradicts the political *raison d'être* of state, generally held and justified since Locke (1690), that the fundamental purpose of state is to protect people's rights by creating a system of criminal law and of legal property rights. In this light, human rights cannot be negative rights. And accepting human rights as positive rights, in turn, must justify both the protecting and providing for functions of state, the latter at least in view of legitimation.

### *The Norm-Rights Transition Through Public Action*

In the case of most of the welfare rights, feasibility requires we adopt a rights realisation mechanism in terms of a pragmatic framework of norms-rights transition process, as we have already discussed above: today's norms become tomorrow's rights in a continuous chain of progressive realisation. Non-compliance due to inability would be a certainty on the part of almost all the addressees, that is states, if the welfare standards were treated as immediately binding *as* rights. The process of progressive fulfilment not only helps confute the argument that goal-like rights are not real rights and confer a status of potential rights upon them, but also

tends, thanks to its phasing in mechanism, to ease the financial burden involved. In general, a part of the tax proceeds goes in to welfare financing. Libertarians, however, object to taxation being used to finance welfare rights provision. For instance, Nozick (1974: 169) argues that “Taxation of earnings from labour is on a par with forced labour.” Note, however, that it also implies that taxation is permissible when it is used to discharge the duties of taxpayers, and the welfare provision by the state is just an organised undertaking of effective fulfilment of individual duties (Beetham 1995). It should be stressed here that as the state replaced the erstwhile addressees, that is, families, friends and communities, in providing for the deprived, it has so occasioned that the taxes associated with welfare rights provision are in effect partial replacements of the latter’s burdensome obligations.

The practical realisation of the norms-rights transition process may be better seen in a framework of demand-supply interaction. The demand side represents the claim of the potential right-holder (that is, the current beneficiary) along with the significance of the necessity and urgency that this claim be fulfilled. The supply side, on the other hand, represents the addressees’ responsibilities vis-à-vis the beneficiary’s claim. (Also see Feinberg 1973.) Note that since the welfare goals (potential rights) are more of social specificity of significance, the demand side in effect is fortified in public support and response. This means that a vibrant and vigilant platform of public praxis ensures to keep the norms in mandatory terms such that it defines on the supply side a duty to realise the norms *as* rights as quickly as possible. It is in this light, we feel, that the signatories to the ICESCR agree to make it a matter of government duty to realise the list of rights recognised in the Covenant as soon as possible.

## **2.2. Rights and Freedom**

Any right is a right to something, which largely is interpreted as constituting freedom. Human rights are essentially ‘to secure freedom’, in quest of ‘well-being and dignity of all people

everywhere.’ (UNDP 2000: 1).<sup>9</sup> Thus, freedom presupposes rights realisation. It is here the significance of recognising welfare standards *as* rights appears imposing: a people enjoy economic freedom only when the corresponding rights are realised. Thus honouring the right to life, the most basic of all human rights, ensures freedom from wants (hunger, shelter, ‘shame’), from ill-health and from ignorance.

### *Positive and Negative Freedom*

As rights, freedom also is viewed from a distinct and rival positive or negative sense (Berlin 1969).<sup>10</sup> Positive freedom of an individual is defined, when she is self-determining, and negative freedom, when she is left free from external interference. In the latter case, freedom implies an *absence* of something (that is, absence of barriers, constraints or interference from others), whereas in the former, freedom entails the *presence* of something (that is, presence of self-control, self-determination, and self-realisation). Thus positive freedom offers possibilities of actions such as to determine one’s life and realise one’s fundamental purposes; the scope for possibilities, in turn, implies the presence of an enabling environment. In this sense, it refers to freedom in the context of collectivities or freedom of individuals in their capacity as members of collectivities. On the other hand, negative freedom has possibilities of actions to the extent allowed in the given negative sense, without *any* external constraints, and thus entirely belongs to an agent as an individual.

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<sup>9</sup> Human Development Report 2000 (UNDP 2000: 1) sets out seven freedoms, viz.,

1. freedom from discrimination – by gender, race, ethnicity, national origin or religion;
2. freedom from want – to enjoy a decent standard of living;
3. freedom to develop and realise one’s human potential;
4. freedom from fear – of threats to personal security, from torture, arbitrary arrest and violent acts;
5. freedom from injustice and violations of the rule of law;
6. freedom of thought and speech and to participate in decision-making and form associations;
7. freedom for decent work – without exploitation.

<sup>10</sup> Kant is said to be the first to have distinguished between a negative and a positive sense of the term ‘liberty’, but the distinction was first examined and defended in depth by Isaiah Berlin in the 1950s and 1960s. Classical liberal theorists like Constant, Humboldt, Spencer and Mill are typically classed as having held a negative concept of freedom, while the critiques of this tradition, like Rousseau, Hegel, Marx and T.H. Green, a positive concept of freedom. After Berlin, the most widely cited supporters of the negative concept of freedom are Oppenheim (1981), Miller (1983) and Steiner (1994). Among the most prominent contemporary supporters of the positive concept of freedom are Milne (1968), Gibbs (1976), Taylor (1979), Sen (1988) and Christman (1991).

### *Freedom and Capability Approach*

Note that in the positive view, freedom is identified with the *ability to be* and to *do*.<sup>11</sup> The sequence of things an individual may value *being* or *doing* constitutes the Sennian concept of ‘functionings’. “The valued functionings may vary from elementary ones, such as being adequately nourished and being free from avoidable disease, to very complex activities or personal states, such as being able to take part in the life of the community and having self respect.” (Sen 1999a: 75). Alternative combinations of such functionings from which the individual can choose, in turn, define her ‘capability’. “Capability is thus a kind of freedom: the substantive freedom to achieve alternative functioning combinations (or, less formally put, the freedom to achieve various lifestyles).” (*ibid.*), or, “the range of options a person has in deciding what kind of life to lead.” (Dreze and Sen 1995: 10-11). The ‘functioning vector’ of an individual represents her *actual achievements*, while the capability set represents the *freedom to achieve*. Thus the Sennian ‘capability approach’ provides two different types of information – one on the *realised* functionings, what an individual is actually able to do, and the other on the *capability set* of alternatives she has, the real opportunities open to her, or the things she is substantively free to do. Of the two, it should be noted, it is the capability to function, not the achieved functioning, that is important. Two individuals may have the same achieved functioning, say, starving; one, an ascetic, starves as she adopts fasting as a way of life and the other, a poor rustic, starves for lack of capability (purchasing power) to buy food bundle at the current price. The former has options, capability to function and achieve freedom from hunger, but her wellbeing consists in observing fasting. The latter, on the other hand, has no option to achieve freedom from hunger, and is illfared as it is against her aspiration. Thus, the two are not identical, even though it is so in terms of their achieved functioning. Therefore, it is not the achieved functioning alone, but that in relation to one’s capability set, that reflects one’s wellbeing.

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<sup>11</sup> To quote Berlin, positive freedom is the ability “to be somebody, not nobody; a doer – deciding, not being decided for, self-directed....conceiving goals and policies of [one’s] own and realising them” (Berlin 1969: 131).



Thus, given the capability set, an individual chooses one vector of functionings, which then becomes her actual achievement and thus determines her ultimate wellbeing. And it is here choice, the move from capabilities to actual achievement, assumes significance. An informed, rational choice does go a long way towards her freedom and enhanced wellbeing. And it is here an enabling environment helps her exercise her informed autonomy in an expanding set of choices to realise that freedom.

At the same time, there are instances of absence of any scope for a choice at all, as in the above case of the poor rustic. The state of hunger she is in is not her autonomous choice, but the consequence of the state of her being deprived of the capability she requires to make a choice. And we know, given the capability set, she would not choose a functioning of starving, but that functioning that achieves her freedom from hunger. This in turn suggests that as long as she remains deprived of the capability, she is unfree. Unfreedom means non-realisation of rights, that is, rights violation. Here the most basic of her human rights, the right to life, is violated. This is not just a question of justice, but one of dignity of humanity, the most fundamental of human rights. Justice is met and human dignity promoted with the removal of that unfreedom, with the realisation of the right to life, with the creation of her capability. It is also here the significance of an enabling environment in contributing to freedom stands high.

### *Freedom and Welfare State*

The presence of an enabling environment required for realising one's freedom, in turn, presupposes a facilitating mechanism that is the collectivity, which the state epitomises. Hence the significance of the state in ensuring freedom. The liberals warn in this respect of possible abuses of the element of paternalism leading to dangerous imposition of authoritarianism (Berlin 1969). But this is a too distant fear to grip a democracy. There is immense scope for state intervention without coercing any individual into specific patterns of behaviour, thereby encroaching upon his freedom. A state, interested in promoting autonomy, has still much space for intervention at least of an informative and educational nature.

The classical liberals sought the conditions for protecting and realising (negative) freedom in the institutionalisation of a free enterprise system based on private property, on the view that the dispersion of power facilitated by a free market economy protects the freedom of subjects against state infringement. The ‘new’ or ‘welfare state’ liberals, however, challenged this hypothetical relationship between freedom and free market economy (Freedman, 1978; Gaus, 1983a, b; Macpherson, 1973). During the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, the ability of a free market economy to sustain what Lord Beveridge (1944: 96) called a ‘prosperous equilibrium’ came under heavy doubt. If a free market economy tended to be unstable or stuck in a Keynesian low level equilibrium with high unemployment, then it could not, the ‘new’ liberals argued, be a valid and adequate basis for a stable, free society. Thus the once unshakable faith in the market soon faded to give way to faith in government as a means of supervising economic welfare. In our view, the appeal of socialism and the capitalist urge to counter it explain the emergence of this new liberal faith. It nevertheless underlined the significance of a welfare state in recognising and realising rights and thus protecting freedom.

### **2.3. Rights, Freedom and Development**

An individual’s freedom to promote the aspirations she has reason to value depends on her capability to achieve functionings that make up her wellbeing. In this sense, we feel, she is free only when her right to capability is fulfilled. Thus her freedom enhances with her capability set, and this underlines the significance of human rights. In fact, freedom can be viewed as the overlapping bridge between human rights and development. Development is the process of enhancing freedom,<sup>12</sup> expanding capability set, opportunities and choices “so that each person can lead a life of respect and value.” (UNDP 2000: 2). In other words, “Development consists of the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency. The removal of substantial unfreedoms, ..., is

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<sup>12</sup> They include the civil and political freedoms, economic facilities, social opportunities including entitlement to education and health services, transparency guarantees involving freedom to deal with others openly, and finally, protective security guaranteed by social safety nets (Sen 1999a: 38–40). We can also include in the list honest governments, open legislative and transparent regulatory systems and effective and impartial legal system, with protection of and support for rights, physical infrastructure such as energy, roads, transportation and telecommunications (Sen and Wolfensohn 1999).

*constitutive* of development.” (Sen 1999a: xii). These freedoms are both the primary ends and principal means of development (Sen 1999a: 10).

Human rights and development thus reinforce each other as they advance together, realising human rights, enhancing human capabilities, and protecting freedoms. On this view, human development is an improvement upon the basic needs approach of the 1970s. This approach emphasised the importance of meeting a core of human needs for achieving poverty reduction as the sole development strategy. On the other hand, human development, with its focus on expansion of human capabilities, goes beyond the basic needs, and covers the whole humanity, not just the poor.

#### *Human Development: A Multidimensional Concept*

Historically, development was interpreted in terms of economic performance, and measured in terms of per capita income. The dawn of the last decade of the last century, however, ushered in a new development perspective with the introduction of the concept of human development and the publication of the first Human Development Report by the UNDP, in the framework of the Sennian Capability Approach. The new perspective accepts individuals as “the wealth of a nation. Its fundamental objective is to create an environment which offers the population the opportunity to live long in good health and to acquire knowledge that will help them in their choices and to have access to resources that will ensure a decent standard of living.” (UNDP 1990). The UNDP’s Human Development Index is an indicator of a nation’s progress, measured as a weighted average of the nation’s literacy and educational achievement, its per capita income, and the citizen’s life expectancy. Thus, human development complements development as conceived in terms of economic growth and monetary stability, recommended by the World Bank as a poverty reduction strategy at the start of the 1990s. It should be noted that the World Bank also has of late argued for ‘comprehensive development’ that includes not only the traditional macroeconomic goals, such as per capita income, monetary and fiscal health and balance of payments stability, but also ‘societal development’, in terms of basic human rights, access to a just legal system, literacy and good health (Wolfensohn 1999). These two broad

objectives of development thus correspond to resource development and humanitarian progress (Streeten 1994).

Thus it is now widely recognised that development is not something just reducible to an increase in income or consumption. It is an integrated concept of multiple dimensions of wellbeing, political, economic, social, cultural, moral, ecological. This in turn requires we go beyond 'economic welfare' to improve the 'wellbeing' of the individual in a greater sense of enhancing her capability to function. However, this involves a primary precondition: accessibility. Functioning essentially presupposes having access to the bundle of goods and services, as well as to information, value, justice, recognition and respect, and so on. Not only does it mark the border between availability and accessibility, it also highlights accessibility in relation to a lack of basic rights.

Availability does not guarantee accessibility in a free market economy, working on the principle of price system with explicit scope for exclusion unless commanded by *adequate* purchasing power. That is, given availability, it is the *adequate* purchasing power that determines accessibility and thus capability and freedom in a market economy. Thus, in the market, income deprivation itself is a capability deprivation. This all the more becomes pertinent in the context of liberalisation drives by a state in its teleological transformation of role reduction. As market extends into more and more vital provisions, such as of food, education and health care, incidence of exclusion and hence imposition of unfreedoms also increase linearly, threatening the very sustainability of development.

In our view, every individual, as a human and social being, is entitled to the *right to development*. So long as accessibility has a direct bearing on development, as we argued above, it also is a human rights issue. Since denial of development is a human rights violation, so also is the lack of adequate purchasing power: poverty is a human rights violation.

## 2.4. Poverty as Violation of Right to Development

Poverty was originally conceived of from a viewpoint of *minimum rights to resources*, by which people are seen as entitled, as citizens, to a minimum income, and hence identified merely in terms of lowness of income. Amartya Sen has extended it to the comprehensive conception of development as freedom, taking poverty as capability deprivation, and hence from the viewpoint of what we call *right to development*, since

“1) Poverty can be sensibly identified in terms of capability deprivation; the approach concentrates on deprivations that are *intrinsically* important (unlike low income, which is only *instrumentally* significant).

2) There are influences on capability deprivation – and thus on real poverty – *other* than lowness of income (income is not the only instrument in generating capabilities).

3) The instrumental relation between low income and low capability is *variable* between different communities and even between different families and different individuals (the impact of income on capabilities is contingent and conditional).” (Sen 1999a: 87–88).

As already explained, capability means the substantive freedom an individual ‘enjoys to lead the kind of life she has reason to value’, such as social functioning, education, and health care longevity (Sen 1999a). Poverty as capability deprivation is thus a basic unfreedom; “economic poverty ...robs people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water or sanitary facilities.” (Sen 1999a: 4). UNDP’s Human Poverty Index captures three aspects of this human deprivation: longevity, literacy and living standard. Longevity is measured in terms of the percentage of people who die before age 40; literacy in

terms of the percentage of adults who are literate; and living standard in terms of a combination of the percentage of the population with access to health services, that with access to safe water, and the percentage of malnourished children under age 5.

### *Poverty: A Multidimensional Issue*

Thus the multidimensionality of poverty has now been accepted in general as an inescapable fact, thanks to the Senian capability approach. World Bank (not to be outdone!) has even gone, in its World Development Report 2000–01, beyond that to accommodate the ideas of individual agency and rights; poverty is seen as more than income lowness and human development; it is also vulnerability and lack of voice, power and representation.

Being multidimensional, poverty also becomes a dynamic concept, as far as the strategies to deal with the problem are concerned. Priority of the focus distinguishes hard core poverty as starvation, absolute deprivation, demanding urgent management. The starving lacks both legal and economic entitlement to food. It is here the minimum right to resources and the basic needs approach become significant. Since income security can be ensured through job guarantee, the right to adequate income gets itself translated into the right to work. This in turn requires the capability failure be compensated for with entitlement to work. And its denial results in starvation, and in a human rights violation. Once this basic right, right to life, is honoured and protected, and the problem of starvation is tackled effectively, the priority of focus climbs up on one by one of the higher floors of freedom, development, in accordance with our norms-rights transition process. This dynamics of realisation thus takes us to higher and higher realms of development. Since freedom constitutes development, unfreedom or poverty means lack of development. And since rights realisation constitutes freedom, poverty means denial of development: poverty is the violation of the right to development.

## **2.5. Participatory Development Process**

As already discussed, recognising the role of the collectivity or the state in creating and sustaining an enabling environment for the individuals to realise their freedom also identifies in effect the correlative duty bearers. Thus, “[t]he state, as a primary duty bearer, has the responsibility to do its utmost to eliminate poverty by adopting and implementing appropriate policies. And the accountability of the state needs to be defined in terms of implementation of policies.” (UNDP, 2000: 77). While there is no necessary relationship, a democracy is more likely to help enhance the state’s respect for and protective coverage and promotion of human rights. Besides being an end in itself, respect for human rights leads to enhanced economic and social capabilities (Dasgupta 1993). However, the vast heterogeneity in the local aspirations and perspectives, needs and responses, tends to leave the direct management of the state responsibility much difficult, if not impossible. It is here the direct participation of the communities in ensuring and enhancing an enabling environment assumes significance. Since it is the local communities that have perfect information on the specific problems they face, the actual and the possible constraints they encounter, and the potential solutions to be explored, their direct participation in the design and implementation of the policies and programmes makes the enterprise fruitful.

Community participation in development process can be realised through either a unitary or a federal structure of state functionings. In the former, the state from its central core extends itself and acts through community groups or co-operatives, that is, the organised beneficiaries at the local level. On the other hand, decentralisation of state power and functionings marks the latter. Here the local bodies are empowered to function as local development institutions of self-government, and constitute an autonomous and hence ideal means of targeting and tackling development issues through co-operatives. This in turn implies that the degree of decentralisation of power of a state is an indicator of its concern for and commitment to human development.

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