

**Human Rights Based Approach to Development
and People's Empowerment through
Participatory Governance:**

**A Critical Examination of Panchayati Raj
Institutions in India**

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Abstract

The concept of Human Rights Based Approach to Development concerning entitlements of the recipients of development and consequent obligation of the duty bearing state and other actors depends upon the interaction and mutually reinforcing relationship amongst human rights, development and democracy. The grass roots level democracy at the village level ushered in by a constitutional amendment, which defines the legal framework of the Panchayati Raj Institutions in India, has close link with the rights based approach to development, as it makes participation a right which in itself politicizes economic and social rights. This empowers the citizens in the remotest rural areas in the key process of decision making by enacting policies at the local level on how to distribute economic and social resources. The linkages of human rights, development and democracy within the local context of the law, policy and practice, become crucial factors to examine while assessing the elements of internationally recognized human rights based approach to development, within the mandate of the Panchayati Raj Institutions. The mandate and the constitutional authority extended to the Panchayati Raj system has the inherent strength of a defined legal framework, which targets the human rights of the individuals within a developmental context, through the structure of governance in favour of the disadvantaged. The Panchayati Raj system empowers and enables the rights holding citizens to use their reasoned agency and to advance their rights to carve out a life they value.

Human Rights Based Approach to Development and People's Empowerment through Participatory Governance: A Critical Examination of Panchayati Raj Institutions in India

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Chapter 1

Introduction

*‘My Idea of village swaraj is that it is complete republic...The government of the village will be conducted by a panchayat of five persons annually elected by the adult villagers...
this panchayat will be the legislature, judiciary and executive ...
Here there is perfect democracy based on individual freedom’*

Mahatama Gandhi, ‘Question Box’, Harijan, 26 July 1942¹

Fifty years after Gandhi wrote the above words, India embarked on what may prove to be one of the most significant changes in its structure of governance. This change is related to the 73rd and 74th amendments to the Constitution of India in 1992, popularly known as the ‘Panchayati Raj Amendments’, which give local governments, rural and urban, a legal status that they formerly lacked. With the elections held for approximately 2,50,000 rural local bodies or the ‘village panchayats’, and 3,700 urban local bodies or the ‘nagar panchayats’, more than 3 million office bearers have been elected, which include about one million women amongst them. This is the largest representative and democratic base in the world². Apart from these numbers, the significance of the empowerment which these provisions bring to the rural and disadvantaged populations is immense. Describing decentralisation as the single greatest force for good governance in terms of its potential for rapid improvements in the lives of the people, Mr. Malloch Brown the former United Nations Development Programme (UNDP) Administrator, has remarked that the 73rd and 74th Amendments to the Indian Constitution had ensured that voices of the poor, especially women were heard in policy making, he states, ‘India is a remarkable story of decentralised governance with three million grassroots leaders, a third of them women, at the heart of the world's largest experiment in local democracy’³.

The provisions of these amendments include principles of empowerment, grass roots level democracy, free and meaningful participation, equity, non-discrimination and accountability; all of which also lie at the foundations of the contemporary concerns

¹ The Collected Works of Mahatama Gandhi. Ahmedabad: Ministry of Information and Broadcasting, Government of India, Navjivan, 1958.

² Iyer. Mani Shankar, ‘The Panchayat System: A Major Innovation in Empowering People’ address by the Minister of Panchayati Raj government of India at the conference on ‘Making Democratic Governments Work- Connecting Principle and Practice’ at the Ash Institute for Democratic Governance and Innovation, Harvard University, April 2005.

³ UNDP - India. Press Release, ‘UNDP Chief ends visit with a tribute to deepened democracy’, available at the UNDP website, <http://www.undp.org.in/News/press/press204.htm>

of human rights, development and governance. A preliminary glance at the provisions of these constitutional amendments shows that these principles are based on the principles of liberal rights and participatory governance, and cover almost the same ground as the human rights based approach to development. This makes it an interesting subject to evaluate. The purpose of this research work is to study and evaluate the human rights based approach to development and see how far the provisions enshrined in the above mentioned constitutional provisions and their confirmatory legislations in India resemble and confirm to an internationally recognized human rights based approach to development.

Human Rights and Development

The interface of human rights and development has been increasingly gaining currency and legitimacy in the international and national policy domains since past quarter of a century now. This relationship between the development and human rights has begun to discover congruence and close compatibility particularly within the last decade which is so clearly brought out in the Human Development Report 2000, which states, 'human rights and human development are close enough in motivation and concern to be congruous and compatible, and they are different enough in strategy and design to supplement each other fruitfully'⁴. Starting from a formal existence within the human rights community through the World Conference on Human Rights, held at Tehran in 1968, there has been significant progress in this direction, namely through the proclamation of the existence of human right to development by the UN Commission on Human Rights in 1977, to the adoption of the Declaration on the Right to Development in 1986 by the UN General Assembly. The political consensus reached on this issue through the World Conference on Human Rights held in Vienna in 1993 further reinforced the interrelationships existing within the development and human rights. This relationship was further strengthened by the UN Secretary General's call for all UN agencies and programmes in 1997 to mainstream human rights throughout the UN system, which led to a proliferation of efforts and endeavours at the international level in this direction⁵.

The constructive engagement of the human rights community, with the development actors in the 1990s, lead to the promotion of the rights-based approach to development. More recently, in the light of the Millennium Development Goals, this has been further endorsed through the "Common Understanding on the Human Rights Based Approach to Development Cooperation," adopted in 2003 at a meeting involving some ten UN agencies and a wide range of other development agencies⁶.

The Office of the High Commissioner on Human Rights lays emphasis on the rights based approach to development by stressing on the rights based empowerment of the poor in its 'Conceptual Framework on Human Rights and Poverty Reduction', which states,

'A major contribution of a human rights approach to poverty reduction is the empowerment of poor people, expanding their freedom of choice and action to structure their own lives...[H]uman rights empower individuals and communities by

⁴ UNDP, Human Development Report 2000: Human Rights and Human Development, p.19.

⁵ Alston.Philip and Mary Robinson,'The Challenges of Ensuring the Mutuality of Human Rights and Development Endeavours' in Alston. Philip and Mary Robinson(eds) Human Rights and Development: Towards Mutual Reinforcement Oxford. Oxford University Press 2005, p.1-3.

⁶ 'The Human Rights Based Approach to Development Cooperation towards a Common Understanding among UN Agencies', 2003, available at <http://www.undp.org/governance/docshurist/03061commonunderstanding.doc>.

granting them entitlements that give rise to legal obligations on others'⁷. Empowerment of the individuals and communities according to a human rights based approach is one of the salient determinants of development. This understanding of development places pre-eminence on human rights, existing within a participatory democratic framework where the voices of the poor are heard and respected. Drawing on the international human rights instruments and the Declaration on the Right to Development, Mary Robinson highlights the importance of the interrelationship of Human Rights and participatory democracy, she writes,

'They (Human Rights instruments) assert that these rights must be effectively enjoyed, whether a country is developing or developed, and that a participatory democracy, based on the rule of law, is the only system of government that can ensure the implementation of all rights'⁸.

In recent years local governments have become important instruments to promote political, economic and social reforms. Decentralisation is occurring in 80% of developing and transition countries and local governments are charged with delivering a wide range of essential services. New responsibilities in health and education have been added to older ones for street lighting, water and sanitation. Yet, though many of these services are internationally recognised human rights, the link between local governments and human rights has been little explored. Human rights advocates have focused on the institutions of central government while experts in administrative reform and decentralisation have tended to adopt a development and governance perspective⁹. The crucial interactions amongst the human rights, development and local democracy are increasingly being realised. These interactions and linkages are the central context of a rights based approach to development. The purpose of this research work is to explore various aspects of these interactions.

Local Democracy and Development In India

Mahatma Gandhi's concern with the Panchayats where the village is idealised a 'complete republic' is based on a conception of local democracy and the empowerment of the people at the village level which emanate from his reliance on the philosophy of 'antodaya' and 'gramswaraj'¹⁰. Largely inspired by Gandhian ideology and indigenous political Indian tradition, this conception of Panchayats and

⁷ Hunt. Paul, Manfred Nowak and Siddiq Osmani, *Human Rights and Poverty Reduction: A Conceptual Framework*. United Nations Office of the High Commissioner for Human Rights, Geneva 2004.

⁸ Robinson. Mary, 'What Rights Can Add to Good Development Practice' in Alston. Philip and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement*, Oxford. Oxford University Press 2005, p27.

⁹ ICHRP, 'Doing Good Service: Local Governments and Human Rights International' International Council on Human Rights Policy, Geneva, available at www.ichrp.org/publications/projects/local_governments.

¹⁰ Iyer. Raghavan .N, *The Moral and Political Thought of Mahatma Gandhi*, Oxford University Press, New Delhi, 2000; Parel. A.J, *Gandhi: Hind Swaraj and other writings*, Cambridge, Cambridge University Press, 1997 p189; Mukharjee. Rudrangshu, (ed), 'The Penguin Gandhi Reader', Navjivn Trust and Penguin India Books, 1993. 'Antodaya' formed of two Sanskrit words 'udaya' which literally means, 'the rise' and 'ant' which means 'the last', in this context the philosophy of antodaya then means the rise of the last person the most disadvantaged and lowly. The conception of 'gramswaraj' which again is formed of two Sanskrit words 'gram' meaning village and 'swaraj', meaning self rule. Gandhi used gramswaraj to address local self government at village level, but his meaning went beyond this to include the moral and spiritual dimensions of human life in the village communities.

Governance through Panchayats, called the 'Panchayati Raj' was also a part of the ideological framework of the Indian nationalist thought during the independence struggle¹¹. The rural local governments called the 'Panchayats' have been an important element of the Indian political tradition and history, drawing back evidence to more than two thousand years of the existence of village republic and autonomous village assemblies formed by village elders. Noted historian Romila Thapar informs that these village assemblies were autonomous in character and took collective decisions in administrative matters, civic regulation and dispute resolution, in an essentially democratic manner. These were addressed as 'panchkula' and later as 'panchayats' which find numerous references in historical sources¹². These Panchayats which literally mean a council of five persons, form a part of Indian history and tradition and are seen as an important cultural element of indigenous system of village level civic regulation and administration in the form of 'gram-panchayat', and a system of village level traditional justice system in the form of 'nyaya-panchayats'¹³. There are number of scholarly studies by commentators on politics, development and governance who have written on panchayat system and its relevance in contemporary perspectives¹⁴. There are a number of socio-legal scholars like Mark Galanter, Upendra Baxi and N.R. Madhav Menon among others, who have written on the importance of the traditional justice system and the role of panchayats in general and 'nyaya- panchayats' in particular as a viable system of justice dispensation in Indian tradition and heritage, having considerable contemporary

¹¹ HDRC-UNDP, 'Decentralisation in India:Challenges and Opportunities', Discussion Paper Series-1, Human Development Resource Centre, UNDP,New Delhi 2001,p 3-5. available at <http://www.undp.org.in/hdrc/resources/dis-srs/Challenges/DecentralisationCO.pdf>

¹² Thapar.Romila, 'A History of India, Volume 1, Penguin Books, 1966. p 246, 252.

¹³ Galanter Mark, Law and Society in Modern India,New Delhi: Oxford University Press 1989, p58.

¹⁴ Some of the prominent studies include, Crook. Richard and James Manor, Democracy and Decentralization in South Asia and West Africa, Cambridge University Press 1998;Dreze.J and A.K. Sen, India:Development and Participation, Oxford University Press 2002; Jain. L.C.(ed), Decentralization and Local Governance: Essays for George Mathew, New Delhi. Orient Longman 2005 (A recent study which brings together the major scholars writing in this field); Jayal. Nirja Gopal, 'Democracy and Social Capital in the Central Himalaya: A Tale of Two Villages', paper presented at conference on Democracy and Social Capital in Segmented Societies, Uppsala University, June 1999; Jayal. N.J(ed), Democracy in India2001; Johnson Carig, Decentralisation in India: Poverty Politics and Panchayati Raj, ODI Working Paper No 199, Overseas Development Institute London, 2003; Kannan. K.P. and N.V.Pillai, Public Action as Participatory Development: The Kerala Experience Re-interpreted in Sengupta. Arjun, et al, Reflections on the Right to Development, Centre for Development and Human Rights and Sage Publications New Delhi,2005; Lieten, G.K., and R, Shrivastav, Unequal Partners: Power Relations, Devolution and Development in Uttar Pradesh, New Delhi, Sage 1999; Manor. James,Madhya Pradesh Experiments with Direct Democracy, Economic and Political Weekly 3, March 2001; Mathew. George and Ramesh Nayak, 'Panchayats at Work: What it means for the Oppressed, Economic and Political Weekly, 16 July 1996, Mathew.; Mathew. George, Panchayati Raj Factors, Institute of Social Sciences New Delhi 1999; Mathew. George, Panchayati Raj Institutions and Human Rights in India, Economic and Political Weekly,11 January 2003; Oommen M.A.,Panchayati Raj – (various titles),Institute of Social Sciences, New Delhi, 1995, 1998, 2000, 2004; Pai. Sudha, Pradhanis in New Panchayats: Field Notes from Merrut District, Economic and Political Weekly, 2 May 1998; Pai Sudha, 'Social Capital, Panchayats and Grassroots Democracy: Politics of Dalit Assertion in Two Districts of Uttar Pradesh 24 february 2001; Vyasulu and Vyasulu, 'Women in Panchayati Raj: Grass Roots Democracy in Malgudi', Economic and Political Weekly 25 Dec 1999, World Bank: The Political Economy of Gram Panchayats in South Asia, Agricultural and Rural Development Unit South Asian Region, World Bank 2006. Available online at World Bank website. (World Bank website contains a wealth of resources within its Rural Development Unit available online on World Bank website). These are some of the prominent writings I could refer

relevance¹⁵. In the traditional system, Panchayats had however not remained purely an element of community based management of local affairs and over the course of history it took the form of caste based panchayats and management of affairs within a caste based community, bringing about in its wake, the elements of social stratification, hierarchy and inequality associated with the caste system. This degraded version of caste based panchayats gets in direct conflict with the liberal and egalitarian principles of the Indian constitution¹⁶.

Steiner and Alston among others have pointed out that the liberal content of Indian Constitution has remarkable human rights significance, reflected through its provisions of fundamental rights and directive principles which are designed to incorporate individual liberty, equality and social justice¹⁷. The Panchayats as a system of local level participatory governance and grassroots level democracy was brought about by the constitutional provisions of placing these institutions in the Part IV of the constitution, under Directive Principles of State Policy through the Section 40 of the Constitution¹⁸. The Article 40 reads,

‘The State should take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as institutions of Self-Government’¹⁹.

Since these provisions were non-justiciable, very few states implemented these provisions in the Indian federal structure as the local government is a state subject. Considering this obstacle, the Indian Parliament passed the Panchayati Raj Amendments Act in 1992, which has enabled the government to make the Panchayati Raj an effective, uniform and a legally binding provision for all the states in the federal structure through the 73rd and 74th constitutional amendments²⁰.

There are a number of studies which have focused attention on the aspects of local level democracy, decentralisation and participatory development. Apart from a number of scholastic writings on this issue coming mainly from political science and development studies disciplines, some of which have been mentioned in the preceding footnotes, there are range of policy based documents and resources through the

¹⁵ Baxi. Upendra, ‘Participatory Justice: A critique of Nyaya Panchayats in Karnataka’ in George Mathew (ed), *Panchayati Raj in Karnataka Today: Its National Dimension*, Institute of Social Sciences New Delhi and Concept Publishing Company, New Delhi 1986 p 76-87; Galanter. Mark, *Law and Society in Modern India*, (edited by Rajiv Dhavan), New Delhi, Oxford University Press 1989; Galanter Mark, ‘Bread for the Poor’: Access to Justice for the Needy in India, *Hastings Law Journal*, Vol 55, No 4, March 2004; Menon Madhava N.R, ‘Social and Economic Rights: Poverty is the Greatest Threat’ in Mathew George Chunakara(ed) *Human Rights 2000*, Institute of Human Rights, Bangalore, Vigil India, 2000 available online.

¹⁶ Sirinivas M.N, *Social Change in Modern India*, Orient Longman, New Delhi 1972, p2-6; Thapar Romila, ‘A History of India, Volume 1, Penguin Books, 1966. p 246, 252. detailed discussion to follow in chapter 3.

¹⁷ Steiner, Henry J., and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*. 2nd ed. Oxford: Oxford University Press 2000; *The Right to Development a Primer*, Centre for Development and Human Rights, New Delhi, Sage Publications 2004. Detailed discussion in chapter 4.

¹⁸ Austin. Granville, *Working a Democratic Constitution: The Indian Experience*. New Delhi: Oxford University Press, 1999; Johnson Craig, ‘Decentralisation in India: Poverty, Politics and Panchayati Raj’, ODI working paper 199, Overseas Development Institute, London, 2003; UNDP-HDRC Supra note 11.

¹⁹ The Constitution of India. Part IV ‘The Directive Principles of State Policy’. Accessible online, on the website of The Ministry of Law and Justice Government of India, <http://indiacode.nic.in/coiweb/welcome.html>

²⁰ The Constitution of India, Amendment Acts. The 73rd and 74th Amendments.

government departments (a separate government ministry of panchayati raj coming up in 2004) and research institutions focused on the study of Panchayati Raj Institutions²¹. Among the scholarly writings on the various aspects of Panchayats, very few studies are probing into the interface of Panchayati Raj Institutions and Human Rights. Mathew George's land mark and pioneering study in this field, 'Panchayati Raj Institutions and Human Rights in India' has drawn attention to the aspects of human rights violations subjected on the rights and liberties of the subalterns, the women and the subordinated castes and classes by the traditional elites and powerful communities and groups in India's hierarchical social system. He focuses attention on the human rights violations which result as the traditionally dominating elites react to the empowerment of these subordinated groups which has come through the provisions of Panchayati Raj, challenging the traditional hierarchies and systems of control and domination. In this case the empowerment of the subordinated groups brought about by the constitutional provisions, is the site of revolution as well as the site of resistance and violence within the power dynamics of the society. This is an important study which reveals how the site of empowerment and rights, brought about by the authority of law, becomes a site of human rights violation as it tries to displace the traditional authority structures²². There is a need of further research not only on the human rights violations aspects but also on the crucial linkage of local democracy, development and human rights within an Indian context especially in the light of the advancement in Law and Practice of participatory governance and development brought about by the above mentioned constitutional amendments.

Purpose of Study

This research paper attempts to focus on the Rights Based Approach to Development through a contextual analysis of a country experience in legislation, implementation and working of formally defined and legally formulated political and developmental arrangements to facilitate democratic process at the local level and promoting the agency of the people to claim their rights in a developmental environment. Panchayati Raj System based on the provisions of the Constitutional Amendment and the subsequent confirmatory enactments in different states within India, would be assessed and evaluated through its laid out provisions in relation to the internationally accepted prominent features Rights Based Approach to Development.

The Rights Based Approach with in the Human Rights and Development Discourse and Practice, has evolved over the years, to a basic set of principles and characteristics, which most of the documents and the authorities on the subject

²¹ For Policy based documents -Government and related documents, Website of Ministry of Panchayati Raj Government of India, <http://panchayat.nic.in>, Ministry of Rural Development Government of India, website <http://rural.nic.in/panch.htm> and the websites of panchayati raj and rural development departments of various state governments in India. Also the UNDP -India website. Some of the prominent independent research organizations devoted to Panchayati Raj are the Institute of Social Sciences New Delhi, website www.issin.org, The national Institute of Rural Development Hyderabad, website, www.nird.org.in.

²² Mathew. George, 'Panchayati Raj institutions and human rights in India', Economic and Political Weekly, Special Article, 11 January 2003. This article is a part of a larger study commissioned by International Council on Human Rights Policy, ICHRP-Geneva. 'Decentralisation, Local Government and Human Rights: A Survey of the Issues' by International Council on Human Rights Policy, Geneva this study involves India, Philippines, Burkina Faso, Mali, Chile, Russian Federation and Uganda. Also available online on the ICHRP website, www.ichrp.org.

endorse²³. The discussion on the Rights Based Approach to Development within a general Human Rights and Development framework would form the second chapter of this research study. The third chapter would introduce and evaluate the Panchayati System and the provisions of the 73rd and 74th amendments in Indian Constitution. Drawing on the provisions of the Rights Based Approach to Development, as laid out in various UN Documents and academic writings, an attempt would be made to evaluate the Panchayati Raj Institutions through a Rights Based Approach to Development (RBAD) and this would constitute the fourth chapter of this study. The fifth chapter would include the concluding remarks. This research study would be based on a preliminary hypothesis that the Panchayati Raj System and its legally defined provisions include most of the provisions of the Rights Based Approach to Development. Each selected principal provisions of the RBAD would be critically examined through the provisions mentioned in the PRI enactments to assess, how far and to what extent, the provisions in both the approaches match.

The principle focus would remain on the analysis and evaluation of the formal provisions mentioned in the Constitutional Amendments and the subsequent confirmatory legislations in the states. The research aims to test the hypothesis that the PRI has a close affinity with the RBAD and to draw inferences about the possibilities of seeing the provisions of the Panchayati Raj Institutions as an example of a culturally embedded and legally defined institutional arrangement which comes very close to a Rights Based Approach to Development.

For the limited purpose of this study, the attention would be focused of the salient provisions of the Panchayati Raj System of Grass Roots level Democracy and its related legislations. The execution of the provisions, discrepancies and problems of field level implementation and other related aspects, are however beyond the scope of the present study.

²³ The Right to Development a Primer, Centre For Development and Human Rights New Delhi and Sage Publication 2004, p53.

Chapter 2

The Rights Based Approach to Development

This chapter deals with the various aspects of the Rights Based Approach to Development and seeks to identify main characteristics of this approach. By surveying the major UN documents, institutional policy documents and academic positions taken on this approach effort would be directed to identify major characteristics of rights based approach to development (RBAD) which would be then utilized as a standard through which an evaluation and examination of the PRI institutions would be done in the following chapter in accordance with the design of this research study. Due to the focus of this study and the limitations of the space, the discussion would be centred on RBAD and all other aspects of Right to Development would not be discussed as it would go beyond the scope of this work.

According to Mary Robinson, 'A rights- based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to protecting and promoting human rights. The rights-based approach integrates the norms, standards and principles of international human rights system into plans, policies and processes of development'²⁴. Seen from this perspective the rights based approach is about entitlements of the recipients of development and consequent obligations of the duty bearing state and other actors. A human rights focus gives importance to the outcome as well as process by which development aims are pursued²⁵. Expanding it further in an empowerment framework, Prof Paul Hunt and others have pointed out that the entitlements thus created through rights based approach amount to giving voices to the poor to enhance their capabilities to take more control of their lives. They observe, 'Fundamentally, a human rights approach to poverty is about empowerment of the poor...Provided the poor are able to access and enjoy them, human rights can help to equalize the distribution and exercise of power both within and between societies. In short, human rights can mitigate the powerlessness of the poor'.

This approach lays emphasis on the pro-poor development where the empowerment of the poor, the marginalized and the voice-less, for having control on their own course of life, livelihood and well-being is seen as a matter of human dignity and human rights aiming at a development process and outcome which is inclusive and just.

It works towards strengthening the capacities of rights holders to make their claims and the duty bearers to meet their obligations²⁶. This gets further clarified by the

²⁴ Robinson. Mary, 'What Rights Can Add to Good Development Practice' in Alston. Philip and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement*, Oxford. Oxford University Press 2005, p38. extracts of Mary Robinson's presidential address at the World Bank in 2001 as quoted.

²⁵ Uvin Peter, *Human Rights and Development*, Kumarian Press 2004, p175, 176.

³ Hunt. Paul, Manfred Nowak and Siddiq Osmani , *Human Rights and Poverty Reduction: A Conceptual Framework*. United Nations Office of the High Commissioner for Human Rights, Geneva 2004, p 13-14. Referred as OHCHR Conceptual Framework from now on.

²⁶ UNOHCHR 2006. Frequently Asked Questions on a Human Rights Based Approach to Development Cooperation, Office of the High Commissioner For Human Rights, Unite Nations Geneva 2006, p 15 available online at the OHCHR website.

General Comment No 9 of the Committee on the Economic Social and Cultural Rights(CESCR), which states:

‘The real potential of human rights lies in its ability to change the way people perceive themselves vis-à-vis the government and other actors. A rights framework provides a mechanism for reanalysing and renaming ‘problems’ like contaminated water or malnutrition as ‘violations’ and , as such, something that need not and should not be tolerated...Rights make it clear that violations are neither inevitable nor natural, but arise from deliberate decisions and policies’²⁷.

This statement coming from CESCR highlights the operational aspect of a rights based understanding of well being and development, used by the international human rights mechanisms to give credence to a rights based understanding of development, where the rights holding individual can claim entitlements from the duty bearing state and other collectivities. This normative grounding derives out of a wealth of international human rights norms and texts which are comprised of a range of rights, covering civil and political, as well as economic, social and cultural rights within in its folds²⁸.

Amartya Sen’s work provides a framework of linking human rights with development. His focus on concepts as ‘functioning’, ‘capability’, ‘individual freedoms to choose a life one values’, characterises development as ‘freedom’ and this informs the understanding of the concept of human development utilised by number of scholars, institutions and policy makers²⁹. The UNDP applies these concepts to link human rights and development which has a direct bearing and relevance to the rights based approach to development. The Human Development Report 2000 notes,

‘human development shares a common vision with human rights. The goal is human freedom. And in pursuing capabilities and realizing rights, this freedom is vital. People must be free to exercise their choices and to participate in decision making that affects their lives. Human development and human rights are mutually reinforcing, helping to secure the well being and dignity of all people, building self respect and the respect of others’³⁰. Informed by these concerns, a pro-poor rights based empowerment oriented developmental framework is the fundamental characteristic of the rights based approach to development.

A vast amount of literature has emerged over the last ten years in the form of academic writings, policy documents and texts which have thrown light on the Rights Based Approach to Development. The United Nations and the international human rights mechanism has directed efforts at conceptual clarity through various documents produced through various Human Rights bodies within the UN³¹. Other intergovernmental organizations like the World Bank and various UN agencies like the UNICEF and UNDP have also adopted a rights based approach in their work

²⁷ CESCR (Committee on Economic Social and Cultural Rights) 1998. The Domestic Application of the Covenant: CESCR General Comment No.9.

²⁸ Moser, Carolyn and Andrew Norton, To Claim Our Rights: Livelihood, Security and Sustainable Development, Overseas Development Institute, London ODI 2001.pviii.

²⁹ ODI, Briefing Paper, Economic Theory, Freedom and Human Rights:The Work of Amartya Sen,London. ODI - Overseas Development Institute Briefing Paper November 2001.p2-3. available online at www.odi.org.

³⁰ UNDP. Human Development Report 2001, p.9.

³¹ Alston, Philip, ‘Ships Passing in the Night: The Current State of the Human Rights and Development Debate seen through the Lens of the Millennium Development Goals’,27 Human Rights Quarterly 755 (2005)

which is supported by a wealth of policy documents and academic writings. The bilateral agencies like the United Kingdom Department for International Development-DFID, the Swedish Development Agency SIDA have also adopted a human rights based approach which is supported by a burgeoning literature in this direction. International Non Governmental Organizations like the CARE, Action Aid, the Minority Rights Group and others have also directed their policy focus in this direction and produced a considerable literature³². All this has also been reflected in the proliferation of academic writings on this issue, within the human rights scholarship on the one hand and across the domain of development studies and social sciences on the other³³.

Through all these writings and documents, certain basic principles of rights based approach to development which are common to most of these organizations can be discerned. For the purpose of this study, I shall concentrate on the principles of a rights-based approach to development as envisaged by the UN Special Rapporteur on the Right to Development – Arjun Sengupta and also through the Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies 2002 and its revised version in 2004 produced by the United Nations Office of the High Commissioner for Human Rights. These documents include an authentic account of the major characteristics of a rights-based approach to development. It is important to refer to these documents as the reports of the UN Special Rapporteur on the Rights to Development and are internationally recognized human rights document, especially devoted to elaborate the conceptual understanding of the mutual compatibility of Human Rights and Development³⁴. Similarly the guidelines prepared by renowned experts on behalf of the Office of the High Commissioner on the Human Rights form an important internationally recognized source of reference for rights based approach to development³⁵.

The Principles of Rights Based Approach to Development

The United Nations Independent Expert's fourth report deals with the RBAD and gives a comprehensive listing of the principal constituents of this approach³⁶. According to this report, the rights based approach entails treating development objectives as right, as entitlements, giving rise to obligations on duty bearing state.

³² Nyamu - Musembi.Celestine and Andrea Cornwall, *What is the 'right-based approach' all about? Perspectives from international development agencies*. Institute of Development Studies-Working Paper 234.IDS Sussex.2004; Salomon Margot.E and Sengupta Arjun, *The Right to Development-Issues Paper*, published by Minority Rights Group International.2003.

³³ Alston Philip, Supra note 10; Nyamu-Musembi. Celestine and Andrea Cornwall, Supra note 10. Apart from the major contributions mentioned above- significant contributions are the recently laid out Principal characteristics of the rights based approach to development by the second UN Interagency Workshop in 2003 in Connecticut(Towards a Common Understanding among UN agencies) on the implementation of a human rights based approach to development in context of UN reforms. Other significant contributions include, Mac Darrow and Amparo Thomas, Peter Uvin and Urban Jonsson through the UNICEF and Frankovitz through the Human Rights Council of Australia which are much acknowlded. The working papers of World Bank and Development think tanks like the ODI in London, IDS in Sussex etc are also highly respected.

³⁴ *The Right To Development :A Primer*, Centre for Development and Human Rights and Sage Publications New Delhi 2004,p 47.

³⁵ OHCHR Conceptual Framework 2004, p 14-15.

³⁶ Fourth Report of the Independent Expert (Arjun Sengupta) to the Human Rights Commission, E/CN.4/2002/WG.18/4. 20 December 2001, paras 26-32.

The principles of a rights based approach to development further qualify the right to a ‘process’ of development, which states that it is not important only to reach at the development outcome but it is equally important how and in what manner – that is through what process that outcome has been reached³⁷. The rights based approach aims at the process which expands the capabilities or freedoms of the individuals to improve their well-being and to realise what they value. This is characterised by adherence to principles derived from the texts of international human rights instruments. These include; equity, non discrimination, participation, accountability and transparency³⁸. The ‘explicit recognition of the national and international human rights normative framework’ is another element highlighted in the OHCHR conceptual framework by Prof Paul Hunt and others, which forms another important element of RBAD³⁹. The principal elements discussed in these two internationally recognized documents can be briefly explained below,

The explicit recognition of national and international human rights normative framework

This forms an important element of this approach. This is an important element to be considered for two reasons; ‘first: the treaty ratifications represent ‘country ownership’ of the relevant provisions and, second, a ratified treaty is legally binding on all branches of Government’⁴⁰. Moreover this recognition also reminds the national governments to use all their resources to follow policies which adhere to these norms and to try to align the national laws in this direction. Similarly it reminds the international community to help governments to realize these obligations.

Equity ,Non- Discrimination and Equality

Equity refers to policies ensuring the equitable distribution of benefits which target the most vulnerable and marginalized sections of the society to restore their dignity and self worth and to ensure their well-being through enhancement of their capabilities and accessibility to power and resources. Non-Discrimination and Equality which are intrinsically related to equity are fundamental elements of international human rights law and precondition for peace and development. It prohibits discrimination on the grounds of race, colour, sex, language, political or other opinion, religion, national or social origin, property, birth or other status, not only between beneficiaries but also between agents. This principle ensures that there are no express legal inequalities in status and entitlements, from policies which are blind to the needs of particular people, or from social values that shape relationships within households and communities.

The OHCHR Conceptual Framework points out that the human rights experience confirms the importance of looking at effects and not only intentions to see whether certain groups of people for example women or indigenous people do not get impoverished disproportionately through some policies which might not have been designed to do so, but in effect they may result in discrimination. The human rights experience valuable insights regarding the efficacy of anti-discrimination and equality

³⁷ The Second Report of the Independent Expert (Prof. Arjun Sengupta) to the Human Rights Commission, A/55/306, 17 Aug 2000, para 22.

³⁸ Supra note 12, para 26-32.

³⁹ OHCHR Conceptual Framework 2004, p 14-15.

⁴⁰ Ibid, p 14.

laws, policies and practices⁴¹. Non-discrimination and Equality has a direct bearing on poverty reduction as poverty and inequality and discrimination exist in mutual reinforcement. As the United Nations Committee on Economic, Social and Cultural Rights Observes, ‘Sometimes poverty arises when people have no access to existing resources because of who they are, what they believe or where they live. Discrimination may cause poverty, just as poverty may cause discrimination’⁴². Recognizing that the existing development policies already employ some element of non-discrimination in its programmes and projects, Hamm observes that the human rights based approach broadens the consideration of non-discrimination to all spheres of development policy and ensures that measures against discrimination neither depend on specific programming nor change according to political decisions. In this way non-discrimination then becomes basic criteria for designing development programmes and policies and a benchmark for measuring their success⁴³. The principles of Equity and Non-discrimination and Equality are closely related to the principle of participation which is a central developmental and human rights concern.

Participation

The rights based development enterprise respects the dignity and individual autonomy of all those who are supposed to be benefited by development, by giving importance to participation and empowerment. It promotes institutionalisation of participatory and democratic processes locally and nationally⁴⁴. This principle gets qualified and further strengthened by Sen’s concept of capabilities to link human rights and development, where participation is considered as a key element. This conception of participation relates to a human rights standard where capabilities of the people are pursued to build up opportunities for them to claim their rights⁴⁵. This involves inclusion in the process of development of all those people who are the poorest, the marginalized, the minorities and the excluded and discriminated against.

The World Bank study ‘Voices of Poor: Crying Out for Change’ underlying the importance of participation for poverty reduction states, ‘The poor want desperately to have their voices heard, to make decisions, and not always receive the law handed down from above’⁴⁶. Rights based approach recognizes that denial to the people’s voices is denial to their rights over their resources and to their lives itself. Peter Uvin stresses the importance of participation, ‘out of respect for the dignity of people and because they are the ones who have to live with the consequences of being wrong’⁴⁷. In this sense the rights based approach to participation requires decentralization of programming from the headquarters to the local levels which ‘requires performance standards which are best negotiated locally’⁴⁸.

⁴¹ Ibid.p 18.

⁴² Poverty and the international Covenant on Economic, Social and Cultural Rights: statement adopted on 4 May 2001 by the Committee on Economic, Social and Cultural Rights.(E/C.12/2001/10), para 11.

⁴³ Hamm.Brigitte I, A Human Rights Approach to Development, Human Rights Quarterly23.4(2001) p 1005-1031.

⁴⁴ Supra, note 4. p 17.

⁴⁵ UNDP, Human Development Report, p9.

⁴⁶ Narayan et al., Voices of the Poor, Vol 2- Crying Out for Change, New York, published for the World Bank by the Oxford University Press, 2000, p.281.

⁴⁷ Supra, note 2, p183.

⁴⁸ Overseas Development Institute(ODI), What Can We Do with a Rights Based Approach to Development? ODI Briefing Paper. Sept 1999, available at http://www.odi.org.uk/briefing/3_99.html.

Hamm links the right to participation with all other rights within the human rights framework⁴⁹. This linkage has been very clearly laid out by Hunt and others in the OHCHR conceptual framework by stressing that the international human rights normative framework includes the right to take part in the conduct of public affairs by referring to the international human rights instruments⁵⁰. This brings out the importance of interrelationship between the human rights and development by maintaining that the participation of the poor in development would not remain meaningful if they do not enjoy civil and political rights like the right to association, right to assembly, freedom of expression, right to information and at the same time they must have an elementary level of economic security and well-being in the form of right to a reasonable standard of living and associated economic, social and cultural rights⁵¹. Empowerment and participation in this way are central to rights based approach to development.

Accountability

The participation within a rights based approach to development is intricately linked to the empowerment of the recipients of development and this empowerment is based on the accountability which the duty bearing entities have towards a development process. As the Institute of Development Studies working paper states, ‘The focus in rights-based version of participation is about shifting the frame from assessing the needs of beneficiaries or the choices of the customers or clients, to foster citizens to recognise and claim their rights and obligation- holders to honour their responsibilities’⁵². According to the UN Special Rapporteur on Right to Development, Arjun Sengupta, the human rights approach helps to establish accountability, and where possible culpability for the failure or shortcoming in the implementation of the policies by establishing the duties and obligations of different parties, especially the state and of the international community⁵³.

This approach establishes rights –duty correspondence by the provisions of remedial or corrective actions, some of them through legislations and where possible, others through appropriate monitoring mechanisms. Prof Sengupta observes, ‘The search for accountability leading up to culpability is a genuine value addition of the human rights approach to the fulfilment of human development.’⁵⁴ The issue of justiciability is an important consideration in this approach. Most of the human rights scholars maintain that justiciability is not a necessary condition for human rights to exist. They stress that the justiciability in case of many human rights are not limited to the courts and the accountability mechanisms may exist outside the judicial mechanisms as well⁵⁵.

⁴⁹ Supra, note 19 at 1019.

⁵⁰ Referring to the international human rights framework Hunt et al draw attention to to the provisions in article 21 of the Universal Declaration of Human Rights, article 25 of icpr and article 13 paragraph 1 of ICESCR.- OHCHR, Conceptual Framework 2004, Supra note 3 at p19 and foot note 26.

⁵¹ Ibid..19-20.

⁵² Supra note 9 at p11.

⁵³ Supra, note 12 at para 31.

⁵⁴ Sengupta. Arjun, ‘On the Theory and Practice of the Right to Development’, Human Rights Quarterly 24.4(2002)837-889.

⁵⁵ Steiner. Henry J and Philip Alston, International Human Rights in Context: Law, Politics, Morals. 2nd ed. Oxford : Oxford University Press, 2000 .p 275, Uvin Peter, Supra note 2 at 132

Prof Paul Hunt and others have clarified this position in the OHCHR Conceptual Framework by stating that ‘the international human rights law requires effective mechanisms of accountability but it does not require judicial mechanisms of accountability. In other words, while there is a binding legal obligation to establish accountability mechanisms, they need not necessarily involve the courts’⁵⁶. The important element of this approach is that there must be an existence of accountability of the duty holders which may involve different mechanisms be it judicial, quasi judicial, administrative or political⁵⁷. The important consideration is not that accountability is determined by the courts but that it is determined in the first instance and that it is effective. Accountability is the fundamental principle behind a rights approach to development because it what distinguishes claims from charity.

Transparency

According to Peter Uvin, ‘For a people to participate, they need information and knowledge, and consequently any human rights approach to development cares very much about clarity and transparency’⁵⁸. The right to information is an important element of transparency. Transparency is essential for ensuring accountability because development programme must be designed in such a manner as to bring out openly all interrelations and linkages between different actions and actors to ensure that the benefits reach the right holders⁵⁹.

Apart from the basic principles highlighted above there are various academics, institutions and agencies who have come up with their own versions of rights based approach to development which have been referred in the beginning of this chapter. Although the basic principles as envisaged by the independent expert on the right to development and by the Office of High Commissioner for Human Rights as discussed here cover the elements included in most of the approaches. Therefore for the purpose of the present study and to avoid confusion amongst institutional differences and academic positions taken by different scholars the comprehensive approaches given in these two internationally recognized works would be used.

⁵⁶ Supra note 3, at p 16.

⁵⁷ Ibid.p 15-16.Prof Hunt et al, through The OHCHR Conceptual Framework, categorise four different types of accountability mechanism and illustrate then with examples to clarify the difference amongst each category.

⁵⁸ Supra note 2 at p 194.

⁵⁹ Supra note 12, at para 31-32.

Chapter 3

The 73rd and 74th Constitutional Amendments and Panchayati Raj Institutions

The initiatives taken in the direction of decentralization and local democracy through the 73rd and 74th amendments which are also called the ‘Panchayati Raj Institutions-amendments’ require all the state governments within the Indian federal structure to introduce certain legislative measures geared to the revitalization and strengthening of the local representative institutions. The interconnection between democratic practice and social equity have a strong bearing on these constitutional developments which took effect in 1993, and have led to a range of initiatives in different parts of the country, undertaken not only by the state governments but also by the political parties, NGOs, grassroots organizations, women’s groups and other activist formations⁶⁰. These amendments indicate at the fundamental restructuring of the governance and administrative system of the country, and are based on the philosophy of decentralisation and power to the people. It is important to note that all this has an element of state-citizen interaction which is empowering for the people and rights based in its basic character.

This chapter starts with a brief reference, to the historical background of the coming into existence of these constitutional measures. The discussion draws on the legal basis of the existence of modern and reformed Panchayati Raj Institutions after the 73rd and 74th Constitutional Amendments came into force. It would be seen how these institutions have evolved as ‘agencies for development of rational legal institutions of representative governments’⁶¹. The principle characteristics of Panchayati Raj System would be highlighted in order to understand the empowering influences of this system and its resultant developmental impact. The important purpose of identifying these characteristics is also to see how far they retain the element of rights based approach, a theme which would be taken up in more detail in the next chapter.

The Historical Context of Panchayati Raj System

The ‘panchayats’ which literally mean coming together and consensus of five wise men, has been regarded as a distinct institution of Indian Civilization having history of more than two thousand years⁶². This was conceptualised by Indian nationalists since the beginning of the twentieth century, as an indigenous Indian democratic political institutions forming a viable system of local self government at village level⁶³. Tracing roots in Indian history and political tradition Panchayat system found its most vocal advocates in Mahatama Gandhi, who started referring to panchayats as a system of indigenous democratic tradition as early as 1894. He used

⁶⁰ Dreze Jeas and Amartya Sen, ‘India: Development and Participation, Oxford University Press, second edition 2002, p 358.

⁶¹ UNDP-HDRC, ‘Decentralisation in India: Challenges and Opportunities, Human Development Resource Centre, Discussion Paper Series-1, UNDP-New Delhi, 2001, p 5. available at <http://www.undp.org.in/hdrc/resources/dis-srs/Challenges/DecentralisationCO.pdf>

⁶² Thapar. Romila, A History of India: Vol 1, Penguin Books, 1966 at p 246, 252.

⁶³ Sarkar Sumit, ‘Indian Democracy: the historical inheritance’, in Atul Kohli (ed), The Success of India’s Democracy, Cambridge, Cambridge University Press 2001, 26-33.

this reference for advocating civil liberties and voting rights to Indians in South Africa. In a civil rights advocacy pamphlet published in 1895 he argued,

‘To say that the Indian does not understand the Franchise is to ignore the whole history of India. Representation, in the truest sense of the term, the Indian has understood and appreciated from the earliest ages. That principle - the Panchayat - guides all the actions of an India. He considers himself a member of the Panchayat, which really is the whole body civic to which he belongs for the time being’⁶⁴.

The panchayati raj system as a form of local self government came up in the nationalist discourse and got translated into a political demand which were recognized to some extent by the colonial government. The administrative changes in 1919 and the provincial legislations in 1935 incorporated some of the elements of panchayat system in their construction of local self governments⁶⁵. It was within the penultimate stages of the freedom struggle and immediately after the independence, during the time of the drafting of Indian Constitution that a critique of panchayati raj system developed which cautioned to the necessity of differentiating between the village panchayats and caste panchayats⁶⁶. In traditional system the village panchayats took care of the adjudicating village disputes and performed regulatory civic functions and the use of village commons. The process of decision-making was participatory and very often a ‘democratic’ consensus emerged due to the mediation of the panchayats. In the caste panchayat on the other hand, the legitimacy and support was derived from the caste identity which was concerned with status and family. Consequently, the regulations within a caste based communal identity could be subjected to social exclusion and hierarchy. Considering the predominance of caste system it was considered that the caste identities might prevail over local level decision making which led to a suspicion in granting greater importance to panchayati raj institutions. This led to heated discussions during the debates related to the drafting of Indian Constitution⁶⁷.

Gandhi’s ideal of village republic with fundamental unit of administration as the village panchayat, which suggested a bottom up approach, did not find much favour with Dr Ambedkar who was the chairman for the drafting committee of the constitution. Coming from a dalits caste himself, he had been a strong advocate of anti-caste movement and therefore looked sceptically at the panchayat system as he considered that the system is prone to get degenerated into caste based panchayats due to the pervasive influence of caste system in the villages which according to him

⁶⁴ Gandhi. M.K., *Collected Writings of Mahatma Gandhi*, Vol 1, 256-272, Ministry of Information and Broadcasting, New Delhi 1958. taken from Crispin Bates, ‘The Development of Panchayati Raj in India’, paper presented at the ‘16th European Conference on the South Asian Studies’ University of Edinburgh sept 2000, available at www.sociology.ed.ac.uk/sas/conf.

⁶⁵ UNDP, HDRC, *Decentralization in India: Challenges and Opportunities*, Human Development Resource Centre, UNDP-New Delhi 2001, p4-5.

⁶⁶ *Ibid*, p 5.

⁶⁷ Corbridge. Stuart et al, *Seeing the State: Governance and Governmentality in India*, Cambridge: Cambridge University Press 2005, chapter 2; Galanter. Mark and Upendra Baxi, ‘Panchayat Justice: An Indian Experiment in Legal Access’, in M. Cappelletti and B. Garth (eds), *Access to Justice: Vol III-Emerging Issues and Perspectives*, Alphen aan den Rijn: Sijthoff and Noordhoff 1979, p 341-386, also available online at www.markgalanter.net/Documents/papers/panchayatjustice; Behar. Amitabh and Yogesh Kumar, *Decentralisation in Madhya Pradesh, India: from Panchayati Raj to Gram Swaraj*, ODI Working Paper 170, Overseas Development Institute, 2002, p2; UNDP: HDRC, *Supra* note 6.

were, ‘a sink of localism and a den of ignorance and narrow mindedness and communalism’⁶⁸. The modernist paradigm of development with an approach of nation building and centralised national reconstruction followed by the first prime minister of independent India Jawahar Lal Nehru, was also not aligned entirely to the Gandhian vision of self sufficient village and total dependence on the village level democracy elaborated through the conception of village ‘Swaraj’⁶⁹.

These debates at the time of India’s independence had a bearing on the legal status of panchayati raj institutions through the constitution of India. Though not found suitable for justiciable status in late 1940s, the panchayati raj institutions still carried an impact on the drafting of the constitution. Galanter and Baxi have pointed out that the disdain for villages as shown by Ambedkar and others was vehemently opposed within the drafting committee of the constitution in which, inspired by the ideals of the Indian freedom struggles, the popular sentiment was to incorporate the indigenous political traditions within a modern liberal democratic system⁷⁰. Advocating for the incorporation of panchayats in the draft of the constitution, members of the constituent assembly like Prof N.G Ranga argued, ‘Without this foundation stone of village panchayats how would it be possible for our masses to play their rightful part in our democracy’⁷¹. These visions of democracy with a regard to the ‘village swaraj’ remained an important element in the political discourse of the time. Craig Johnson has pointed out, ‘Gandhi’s vision had an enduring effect on the ways in which decentralisation has been argued and defended in Indian politics’⁷². This influence can be seen in the constitutional provision of incorporation of the panchayati raj in the directive principles at the time of adoption of Indian Constitution in 1949, which though remained short of justiciability, gradually grew in substance and relevance to finally get reflected in the 73rd and 74th constitutional amendments in 1992.

The Constitution of India and the status of Panchayati Raj Institution

The constitution of India, adopted by the constituent assembly on 29 November 1949, included the ‘panchayats’ under the Article 40 and Part IV called the Directive Principles of State Policy. The Article 40 reads, ‘The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government’⁷³.

The salience which the constitution gave to the ideological plane of Indian freedom struggle and Gandhian vision of village swaraj had a bearing on these provisions⁷⁴. This is evident from the linkages the Constitution made to these ideals. The Article 51 A of the constitution lays down that it would be the duty of every citizen of India to, ‘cherish and follow the noble ideals which inspired our national struggle for

⁶⁸ Quoted in Bates Crispin, Supra note 5.

⁶⁹ Supra note 6 at p2.

⁷⁰ Galanter, Mark and Upendra Baxi, ‘Panchayat Justice: An Indian Experiment in Legal Access’, in M. Cappelletti and B. Garth (eds), Access to Justice: Vol III-Emerging Issues and Perspectives, Alphen aan den Rijn: Sijthoff and Noordhoff 1979, p 341-386, also available online at www.markgalanter.net/Documents/papers/panchayatjustice.

⁷¹ Ibid, at p 344.

⁷² Johnson Craig, ‘Decentralisation in India: Poverty, Politics and Panchayati Raj’, ODI working paper 199, Overseas Development Institute, London, 2003, p16.

⁷³ Ibid, Article, 40.

⁷⁴ Supra, note 10 at 341-344.

freedom.⁷⁵ The Directive Principles of State Policy, thus carried a moral force and a legal duty for the Indian State to implement the provisions of Article 40 by constituting the local self government at the village level on the lines of the panchayat system.

Since the federal structure of governance in India divides subjects between the Union and the States, the local self governments and panchayats form a part of state subject according to the seventh schedule of the constitution. According to this arrangement, the governments at the state level were bound to implement the local self governments according to the panchayat system by following the Directive Principles of State Policy through the Article 40 of the constitution. Although there was a legal duty to follow but as it was not binding by law to do so, there was variability in performance of different states⁷⁶. The Union Governments however showed concern at the lack of proper implementation by setting up number of committees and high level panel to study the problems in the implementation of panchayati raj system and to suggest measures for effective implementation of the system⁷⁷.

After an experience of democratic governance of around forty years, the role and form of democracy and within it the 'normative and political basis of local government'⁷⁸ was being reconsidered. It was acknowledged that political decentralisation provides a more durable 'rational legal' framework and a basis of decentralised development and the panchayati raj model in this context, is well-suited to the Indian conditions⁷⁹. Apart from the demands of a democratic structure whose three fourth population resided in the villages, there was widespread concern amongst scholars and policy makers for 'democratic deepening'⁸⁰ and to infuse 'legitimacy to India's democratic institutions'⁸¹. Stuart Corbridge and others have pointed out that it was around this time in the late eighties and the early nineties that within the development discourse participatory approaches had been gaining ground which advocated for greater power to the people and lesser bureaucratic determinism in a meaningful democracy to build a people oriented developmental environment⁸². It is important to note that the international politics and the human rights agenda was also increasingly taking a pro-poor stance and advocating democratic practices. All this must have impacted and facilitated the general atmosphere for change.

⁷⁵ The Constitution of India, Article 51 A(b).

⁷⁶ Behar and Kumar Supra note 8 at p 2-5. Also in: Mitra Subrat K, 'Making local government work: local elites, panchayati raj and governance in India' in Atul Kohli (ed), *The Success of India's Democracy*, Cambridge University Press 2001, p 103-111;

⁷⁷ Supra, note 13 at 16. Some of the important commissions among them were the Balwant Rai Mehta Commission of 1957, the Ashok Mehta Commission of 1978 and GVK Rao Committee of 1985

⁷⁸ Mitra Subrat K, 'Making local government work: local elites, panchayati raj and governance in India' in Atul Kohli (ed), *The Success of India's Democracy*, Cambridge University Press 2001, p 109.

⁷⁹ Supra note 2 at p 5 Box 2.

⁸⁰ Mathew George (ICHRP-Geneva and EPW), 'Panchayati Raj Institutions and Human Rights in India', *Economic and Political Weekly*, 11 January, 2003 at p 156. This article is a part of a larger ICHRP-Geneva sponsored study, 'Decentralisation, Local Government and Human Rights: A Survey of the Issues' by International Council on Human Rights Policy, Geneva this study involves India, Philippines, Burkina Faso, Mali, Chile, Russian Federation and Uganda.

⁸¹ Kohli Atul, 'Introduction' in Atul Kohli (ed), *The Success of India's Democracy*, Cambridge University Press, 2001, p12.

⁸² Corbridge. Stuart et al, *Seeing the State: Governance and Governmentality in India*, Cambridge: Cambridge University Press 2005, p 124-125.

The Panchayati Raj Amendments

These and innumerable other influences within a democratising political structure, coupled by the willingness of the Governments to make the Governance pro poor and decentralised, the panchayati raj system was made justiciable and raised in constitutional status through the 73rd and 74th Amendments in Indian Constitution in 1992. This brought legitimacy to the local government by making it legally binding for state governments to introduce this system at local level and brought uniformity in the institutional structure of the panchayati raj all over the country. As a result of these constitutional steps taken by the Union and the State governments, India has moved towards what has been described as ‘multi-level federalism’, and more significantly, it has widened the democratic base of the Indian polity. Through these measures India gains the unique distinction of having the largest democratic base any where in the world, constituted by the legally binding provisions of democratic empowerment of all sections of society which are intended to reach up to the remote villages and hamlets; and the marginalized and excluded groups of the society⁸³.

Before the Amendments, the Indian democratic structure through the elected representatives was restricted to the two Houses of Parliament, with 25 State Assemblies⁸⁴ and two assemblies of Union Territories which together accounted for 4963 elected members. Now there are nearly 600 district panchayats, about 6000 block panchayats at the intermediate level and 250,000 gram panchayats at the village level, which is significant as it is at the rural level that 72.2% of Indian population resides. Similarly at the urban level there are around 3700 elected urban bodies. Today, every five years about 3.4 million representatives are elected by the people through the democratic process, out of whom one million are women. Women head about 175 district panchayats, more than 2000 block panchayats and about 85000 gram panchayats. A large number of excluded groups and communities are now required to be included in the decision making process by virtue of these constitutional provisions which have made such inclusions of dalits and other excluded groups mandatory, by virtue of law. As a proportion of their population which stands at 22.5% of the total Indian population, these excluded and marginalized groups are to be represented by 660000 elected members through these legally binding measures⁸⁵.

These 73rd and 74th Amendments relating to rural and urban local bodies respectively, inserted Parts IX and Part IX A, relating to the rural panchayats and urban municipalities in the Constitution (Annexure 1). Since the local government is an exclusive state subject under entry 5 of list II of the Seventh Schedule⁸⁶, the Union just provides the outline of the Panchayat system, which would be implemented by

⁸³ Iyer. Mani Shankar, ‘The Panchayat System: A Major Innovation in Empowering People’ address by the Minister of Panchayati Raj government of India at the conference on ‘Making Democratic Governments Work- Connecting Principle and Practice’ at the Ash Institute for Democratic Governance and Innovation, Harvard University, April 2005.

⁸⁴ There were 25 states in 1992 three states of Chattisgarh, Uttaranchal and Jharkhand were added later on bifurcation from the existing states in 2000.

⁸⁵ Mathew George Supra note, 21 at 3-4; and also from [www.panchayats.nic.in/manishankar Iyer/](http://www.panchayats.nic.in/manishankar%20Iyer/)

⁸⁶ The Constitution of India, Part IX and Part IX A and the Seventh Schedule.

the States by making laws or amending their existing laws ⁸⁷ to bring them in confirmation with the provisions of Amendments. As per the requirements, all states have enacted new Acts or incorporated changes in confirmation to these Amendments. Almost all of them have conducted elections under the new system and many amongst them are now in the second five years term of its operation.⁸⁸

What is significant from development and participatory governance point of view, is the mode of power and authority vested in the panchayats and also the demarcation of 29 development functions and jurisdictions for PRI bodies, which may enable them to work as 'institutions of self governance'. These powers and functions include the decisions and execution regarding matters of economic development and social justice which are mentioned in the Art 243 G and the separate schedule created for this purpose, the Schedule XI of the Constitution⁸⁹ (Annexure 2). The major characteristics and features of these constitutional amendments are discussed below.

Elections, Constitution of Panchayats and their Continuity

Panchayats are to be constituted for every state at village, intermediate and district level which is a system of uniform structure through out the country. There has to be a five years duration of panchayats which will be constituted on the basis of direct election through universal adult franchise. Members of Panchayats at all levels would be elected through direct elections at village level, the election of the chairpersons at the intermediate level will be through indirect election. Continuity is ensured by the provisions of five yearly elections and re-elections in case of dissolution of panchayats on some valid grounds as laid down in provisions. The elections are to be conducted by independent state election commissions.

Gram Sabha or Village Assembly

This is a very important empowering provision for the rural people. This system provides that a sarpanch or the chairperson of gram panchayat will convene a gram sabha, twice a year, consisting of all the adults in the village that are on the electoral roll. The gram sabha performs the function of direct democracy by acting as legislature and an accountability mechanism at village level, where all the members of the gram sabha, that is all the adults in the village have a right to discuss matters and view opinion and show consensus or otherwise, pertaining to the matters of the village panchayat. The following matters should be discussed in the gram sabha as laid down in the constitutional provisions which most of the state acts endorse,

- Annual statement of account and audit report.
- Selection of Development Schemes and approval of plans and their location.
- Control of village commons and minor forest produce
- Control institutions and functionaries in all social sectors.
- Fixing accountability of panchayat post holders including the chairpersons.
- Selection of the beneficiaries and review of the selected beneficiaries.
- Report on the administration of the previous year.

⁸⁷ Given the history of Panchayati Raj in India since India's independence, most of the states had some form of Panchayat laws due to its inclusion in the governance policy of most of the states due to the Directive Principles of State Policy. These were however not uniform through out the country.

⁸⁸ Government of India , Ministry of Panchayati Raj, official website under 'panchayati raj in the states', at <http://panchayat.nic.in/states>.

⁸⁹ The Constitution of India,, Schedule XI.

- Proposal for fresh taxes or the enhancement of the existing taxes.

Gram sabha is the basic institution of decentralised governance. It is a system of direct democracy, a political institution that seeks to place direct political power in the hands of the people, without the mediation of elected representatives. Gram sabhas have the potential of overseeing the working of elected bodies and bureaucracies. Rajni Kothari, visualises gram sabhas as ‘watchdogs’ coming between ‘the politician-bureaucratic nexus’ and believes that ‘over time, with growing confidence they would prove that they cannot be browbeaten by dominant individuals or castes, and become a force to reckon with’⁹⁰. These Gram Sabhas show a great promise for the empowerment and rights of the rural people and powerless masses.

Positive Discrimination for the Disadvantaged groups

The provisions of the Panchayati Raj Act are very explicit regarding the inclusion of the members of the vulnerable and excluded groups like the dalits or the schedule castes, indigenous groups or the schedule tribes and women. Reservations for these groups are ensured through proportional representation at all the levels of the tripartite structure of the Panchayati Raj system. This representation is proportional to the population percentage of these groups in each area and includes the reservation s on the seats of chairpersons and post holders as well.

Gender Concerns and the Positive Discrimination for Women

The Panchayati Raj Amendments are very significant in terms of women’s empowerment. Through these amendments, not less than one third of the total number seats are reserved for women which includes reservations for women within the schedule cast and tribe groups. This provision ahs created one million village level elected women leaders. This provision has created new spaces for women’s empowerment through law and has enabled inclusion of women in social and political life. The fact that this system penetrates at the heart of the rural society where in many instances the patriarchy and denials are most acute, is in itself a significant advancement⁹¹

Powers and Authority

These amendments provide for the states to endow the panchayats with powers and authority, ‘to enable them to function as institutions of self government. The functions stated in the Article 243 G are in the nature of developmental and governance functions related to the following-

- preparation of plans for economic development and social justice
- the implementation of schemes for economic development and social justice as may be entrusted to them.
- The Schedule XI has a list of 29 functions (Annexure 2), which relate to local level development and social justice issues and what is described as ‘neighbourhood public goods’, as opposed to ‘national public goodslike

⁹⁰ Quoted in Yatindra Singh, Decentralised Governance in Madhya Pradesh: Experiences of Gram Sabha in scheduled areas, Economic and Political Weekly, Oct 5 2002.

⁹¹ Supra note 22, at p11-12.

national self defence etc.⁹². These 29 functions cover a wide range from land reforms, minor irrigation to poverty alleviation programmes, primary education, public distribution system, sanitation, , women and child development , welfare of the weaker sections, and people living below poverty line to health and nutrition, sanitation and housing, to name a few.

Financial Matters and Audits of Accounts

This gives provision for sufficient amount of financial powers and budgetary authorities at the local levels where the panchayats become the regulatory authorities in managing their own natural and physical assets and are able to earn an income from them through taxes, to be used for the development of the panchayat it self. Audit of panchayats are to be provided for by the state legislatures through independent audit authorities. Gram Sabha also acts as the first level of budget reviews and financial accountability, as all the accounts are required to be revealed before, and to be reviewed by the Gram Sabha.

The Panchayats (Extension to the Schedule Area) Act 1996

The areas predominantly inhabited by the indigenous or the tribal populations in nine states of India, in what is called –Schedule V areas have been given a special legal dispensation through this Act⁹³, over what is available elsewhere, giving regard to the tradition, culture and way of life of the tribal communities of these regions. This Act recognizes the rights of tribal communities over natural resources, respects their traditional institutions and gives vast powers of self- governance to the tribal communities. The powers vested through the village assembly or the Gram Sabha authorize it to approve all development plans, control all functionaries and institutions in social sectors as well as manage water bodies and other natural resources, have ownership of minor forest produce, prevent alienation of land, manage village markets and resolve disputes. The village assembly and the panchayats are required to be consulted prior to any move to acquire land or grant any mineral concessions. This Act, within a framework of panchayati raj provisions of the constitution, is focused on tribal way of life and special life styles and entitlements born from it⁹⁴. By providing that at least 50% of the members in Panchayats are tribals and the Chairperson is always a tribal, this law aims at giving the tribal communities the ‘necessary critical mass to ensure that decisions taken in Panchayats are not indifferent or opposed to their interests’⁹⁵.

These provisions have come through Constitutional amendments to bring uniformity in structure and democratic spirit of the panchayati raj institutions and also to bring effective compliance through legal obligations⁹⁶. All the states in India have enacted laws or amended their existing laws to follow the Constitutional Amendments⁹⁷.

⁹² UNDP-HDRC, Supra note 2 at p8.

⁹³ The Article 244 under the Schedule V of the Constitution, already acknowledges the areas predominantly inhabited by indigenous people and their special context..

⁹⁴ The Panchayats Extension to the Scheduled Area) Act 1996 can be seen on the website of Government of India, Ministry of Panchayati Raj, <http://panchayati.nic.in/pesa>.

⁹⁵ Iyer Mani Shankar, Supra note 26 at 4.

⁹⁶ UNDP-HDRC, Supra note 2 .at 1-5.SEE ALSO NOTE

⁹⁷ Government of India, Ministry of Panchayati Raj official website, <http://panchayats.nic.in/states>.

Some of the states like Karnataka, Kerala, West Bengal and Madhya Pradesh have shown significant advancement in implementation by taking radical measures and other are following their examples⁹⁸. All this is definitely changing the life course of the people and in bringing empowerment and inclusive, rights cautious citizenship.

These are the salient features of these Amendments which are briefly introduced here.

⁹⁸ UNDP-HDRC Supra note 2; Manor James Madhya Pradesh Experiments with Direct Democracy, Economic and Political Weekly 3, March 2001

Chapter 4

A Critical Examination of Panchayati Raj Institutions in the Context of the Rights Based Approach to Development

The Human Rights Based Approach to Development is an important meeting ground for human rights framework with the development practice. Elaborating on these synergies, Darrow and Thomas point out that from a human rights perspective an analysis of this approach leads to two broad categories: normative and instrumental⁹⁹. The normative standards of human rights interact at an instrumental level within a capability and freedoms based developmental framework¹⁰⁰ to give effect to a rights based approach to development. The freedoms based conception of development draws on the relevance of holistic understanding of development which integrates the concerns of reclaiming of civil and political rights as well as economic, social and cultural rights for the poor and the marginalized¹⁰¹. The synergy which exists between the fields of human rights and development is increasingly been addressed through the rights based approach to development¹⁰².

Reflecting on these linkages Caroline Moser sees rights based approach to development through the following three precepts which are, (1) People are citizens with rights (entitlements and capabilities) rather than beneficiaries with needs.(2)The government, with its obligations to its citizens, has a central role to play in rights based development. (3)Grassroots participation is crucial to ensuring that the voices of the poor are heard¹⁰³. These precepts give a simplified and practical orientation to the commonly agreed basic principles of a rights based approach to development which consist of non-discrimination, equity, participation, accountability and transparency which have been well articulated in the Fourth Report of the UN special rapporteur on the right to development¹⁰⁴. This approach is also linked to the understanding that a rights based approach is an essentially a political matter which according to Peter Uvin involve social, political, ideological, cultural and economic dynamics of the societies and is based on a premise where the internalisation of 'new social norms' is created to effect 'mobilization of grassroots and citizen power in favour of certain rights'¹⁰⁵. The concerns of this research work are aligned to this line of thinking.

⁹⁹ Darrow,Mac and Amparo Tomas, 'Power, Capture and Conflict: A call for human rights accountability in development cooperation', Human Rights Quarterly, 27.2, 2005,p 492.

¹⁰⁰ Sen. A.K, Development as Freedom, Oxford University Press,1999, Introduction, p3-13.

¹⁰¹ UNDP, Human Development Report 2000.

¹⁰² Alston,Philip, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate seen through the Lens of the Millennium Development Goals',27 Human Rights Quarterly 755 (2005)bility in development cooperation', Human Rights Quarterly, 27.2, 2005,p 492.

¹⁰³ Moser. Caroline, 'Rights, Power and Poverty Reduction', in Alsop Ruth (ed) Power, Rights and Poverty: Concepts and Connections, World Bank 2005, p35.

¹⁰⁴ Fourth Report of the Independent Expert (Arjun Sengupta) to the Human Rights Commission, E/CN.4/2002/WG.18/4, 20 December 2001, paras 26-37. From now on –The Fourth Report/RTD.

¹⁰⁵ Uvin.Peter, Human Rights and Development, Kumarian Press 2004,p176.

Development, Human Rights and Democracy

The mobilization of the rights of citizens is seen as a common and overlapping element of both human rights and democracy. Acknowledging the linkage between the human rights based approach to development and democracy, Brigitte Hamm considers that 'democratic institutions best guarantee stable and continuous participation and the growth of civil society and discourage dependence on paternalistic and arbitrary goodwill'¹⁰⁶. David Beetham maintains that the , 'connection between democracy and human rights is an intrinsic rather than extrinsic one; human rights constitute a necessary part of democracy'¹⁰⁷. The human rights based approach which gives salience to democratic ideals like equality, participation and empowerment of the poor and the marginalized. It strives for a democratic structure and process of political and social regulation, which does not remain limited to national parliaments alone, but goes deep to effectively involve local level participatory democracy¹⁰⁸.

The central concern of this research work has been to explore the relevance of the synergy between the development and human rights especially in the case of rural poor with the help of examining the framework of participatory democratic structure and process, which gives shape and meaning to the citizen's participation as an equal and rights holding subject in a relationship with the state¹⁰⁹. Rose Mary McGee and other have tried to highlight in a recent study that the elements of mainstreaming inclusive citizenship, rights, participation and accountability can also be seen in the concerns of some existing country programmes related to local level participatory democracy where a legal framework has been devised to elaborate on the empowerment of the poor and the marginalized¹¹⁰. Nyamu - Musembi and Cornwall point out that there is a realisation that some of the country programmes, policy and legal frameworks should be seen for their inherent worth for building up and strengthening the rights based approach as the existing programmes may be 'informed by broadly similar principles to those articulated within the rights discourse without ever calling what they are doing 'rights- based''¹¹¹.

Developing the above line of thinking, this chapter attempts at seeing and evaluating Panchayati Raj Institutions and its constitutionally laid out legal framework, through a rights based approach to development. It is perhaps an example to show that these symbiotic relationships between rights agenda and development and democracy exist

¹⁰⁶ Hamm. Brigitte, 'A Human Rights Approach to Development', Human Rights Quarterly 23.4(2001) p 1020.

¹⁰⁷ Beetham David, Democracy and Human Rights, Polity Press, 1999, p92

¹⁰⁸ Gaventa. John, , Triumph, Deficit or Contestation: Deepening the Deepening Democracy Debate, IDS Working Paper 264, 2006. available at www.ids.ac.uk/ids/bookshop.

¹⁰⁹ Kabeer Naila, 'The search for inclusive citizenship: Meanings and expressions in an interconnected world', in Naila Kabeer (ed), Inclusive Citizenship: Meanings and Expressions, London; Zed Books 2005, p 1-31.

¹¹⁰ Rosemary McGee et al, 'Legal Frameworks for Citizenship Participation: Synthesis Report' Logo-link Research Report, Brighton IDS 2003, available at www.ids.ac.uk/ids/bookshop

¹¹¹ Nyamu-Musembi. Celestine and Andrea Cornwall, 'What is the 'rights-based approach' all about? Perspectives from international development agencies', IDS Working Paper 234, Brighton IDS 2004, p 5, available at www.ids.ac.uk/ids/bookshop.

and that these synergies must be discovered and addressed by both the human rights and development communities in order to strengthen the existing efforts and build on their potentialities for realisation and mainstreaming of rights based approach to development. The aim of this chapter is to see how and in what ways the Panchayati Raj Institutions show an affinity to the Rights Based Approach to Development or in other words how far and how well the PRI framework and enactment stands the test of the commonly agreed international RBAD normative framework. The discussion is based primarily on the legal and normative framework of the two systems and does not delve deep into the practical working of the PRI in different states in India, as it is beyond the scope and size of this research project. The discussion in this chapter would draw heavily from the chapters 2 and 3 which form the background for this discussion as they deal with the Rights Based Approach and the Panchayati Raj Institutions respectively.

Recognizing the commonly agreed principles on which a right based approach is understood and applied, the office of the high commissioner for human rights maintains that there is an ‘emerging consensus on the basic constituent elements of this approach’¹¹². In a systematic study of the rights based approach to poverty reduction conducted on behalf of the Office of the High Commissioner for Human Rights, eminent human rights scholars, Prof Paul Hunt, Prof Siddiq Osmani and Prof Manfred Nowak have laid out a conceptual framework to provide operational guidelines for the adoption of a human rights approach to poverty reduction¹¹³. According to this framework the main features of Human Rights Approach are: Non-Discrimination and Equality, Participation and Empowering the Poor, Monitoring and Accountability, Explicit Reference to International Human Rights Framework in the national law and International Assistance and Cooperation. Since this conceptual framework is an internationally well recognized document, put forth by the United Nations, it forms an authentic source of reference for the purpose of this study. Taking each of the above given features into account, I shall be comparing them with the provisions of the Panchayati Raj Constitutional Amendments. I would try to see how the panchayati raj framework incorporates these elements and whether an affinity exists between the two frameworks.

The Constitution of India and Panchayati Raj Institutions

The analysis of the human rights based element has to be seen in the perspective of the egalitarian spirit of the Indian Constitution itself in which the Panchayati Raj amendments are rooted and through which they have taken the present shape through its 73rd and 74th amendments. It is topical to discuss the underlying spirit and purpose of the Indian Constitution at this stage as the legal existence of the PRI system has come about and evolved through the Indian Constitution from the time of its drafting(at the penultimate stages of India’s hard won freedom struggle from colonial

¹¹² Office of the High Commissioner for Human Rights(OHCHR), ‘Rights- Based Approaches: Is There Only One Rights Based Approach?’ at <http://www.unhchr.ch/development/approaches-05.html>.

¹¹³ Hunt Paul, Siddiq Osmani and Manfred Nowak, ‘Human Rights and Poverty Reduction a Conceptual Framework’ Office of the High Commissioner for Human Rights, OHCHR, Geneva and New York 2004, available at <http://www.unhchr.ch/html/menu6/2/povertyE.pdf>

rule), to its various amendments and present shape¹¹⁴. It is inspired by the four major principles of justice, liberty, equality and fraternity which constitute the preamble of the constitution¹¹⁵.

Steiner and Alston have pointed out that the Indian constitution retains the principal features of human rights within its fundamental rights articles and the directive principles of state policy, which have been designed to foster a democracy and to 'build a more inclusive national, secular legal order'¹¹⁶. Considering the social and economic hierarchies and social segregation existing in the traditional Indian society, Jean Dreze points out that the ideas which shaped the constitution were related to the spirit of radical social transformation based on the principles of democracy¹¹⁷. Commenting on the context and content of the Indian Constitution sociologist Andre Beteille has pointed out that, 'The Indian Constitution was written at a turning point in the country's history. It is not merely a set of rules relating to governance, but a design for a new kind of society. The older society that had prevailed for centuries and millenia was based on the principle of hierarchy; the new society envisaged in the Constitution was to be based on the principle of equality'¹¹⁸. The discussion on the underlying spirit and purpose of the Indian Constitution and its conception of democracy and radical social transformation would prove useful in the context of this discussion on the PRIs and their rights based underpinnings. Main features of a rights based approach are discussed below in the light of these constitutional amendments.

Non Discrimination and Equality

Non Discrimination and Equality are essential elements of human rights law and naturally form the key ingredient of a rights based approach to development, which have been discussed in chapter two. To appreciate the context of Non Discrimination in the Indian Constitution in general and Panchayati Raj Institutions in particular, its relevant to refer to the traditional structure of social inequality which existed in the Indian society, imprints of which are still very visible. The social hierarchy in traditional social system are underpinned by a traditional and religion bound legal order in which privileges and disabilities were carefully modulated according to caste and gender¹¹⁹. The equality provisions in the Constitution are not confined to political equality at election time, but reach into the basic social and economic matters and

¹¹⁴ Steiner. H.J, and Philip Alston , International Human Rights in Context : Law, Politics, Morals, Oxford : Oxford University Press, Second Edition 2000,p 349; Jayal. Niraja Gopal, 'Introduction' in Niaraja Gopal Jayal (ed), Democracy in India, Oxford University Press 2001; Sarkar Sumit, 'Indian Democracy: the historical inheritance', in Atul Kohli (ed), The Success of India's Democracy, Cambridge, Cambridge University Press 2001.

¹¹⁵ The Constitution of India: Preamble. The Preamble elaborates on these four principles by defining the scope that is Justice- social, economic and political; Liberty-of thought, expression, belief and worship; Equality- of status and opportunity and Fraternity- assuring the dignity of individual and unity and integrity of the nation.

¹¹⁶ Steiner. H.J, and Philip Alston , International Human Rights in Context : Law, Politics, Morals, Oxford : Oxford University Press, Second Edition 2000, p 502.

¹¹⁷ Dreze. Jean , 'Democracy and the Right to Food' in Alston. Philip and Mary Robinson (eds.), Human Rights and Development: Towards Mutual Reinforcement, Oxford University Press, 2005.p 46.

¹¹⁸ Beteille Andre, 'Empowerment', Economic and Political Weekly, 6 March 1999.part I background, available at www.epw.org.in.

¹¹⁹ Ibid

intend to touch and transform the Indian society by enshrining reservations and positive discrimination for historically disadvantaged groups. Awareness of the difficulties in eradicating the deep rooted inequalities had lead to the cautionary remarks by Dr Ambedkar the Chairman of the Constituent Assembly, after the coming in force of the Indian constitution by stating that, 'On the 26th January 1950, we are going to enter a life of contradictions. In politics we will have equality and in social and economic life we will have inequality'¹²⁰. It is perhaps this caution which forms the basis of reinforcing the equality principles of the Constitution in all other enactments and laws, which also find reflection in the PRI amendments.

Beyond the symbolic imagery of the independent 'village republic', an important element of this relates to the idea that the panchayats can and should serve as a forum that would represent traditionally marginal groups such as women, the scheduled castes, the scheduled tribes and serve as a vehicle for their empowerment as rights holding citizens leading to their social advancement. In order to ensure the equal participation of the disadvantaged groups the Panchayati Raj Amendments include provisions like: elections for electing representatives at village, sub-district and district levels be elected to five year terms; one-third of all seats be reserved for women; there must be reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs) proportional to their population; such reservations must apply to elected village chiefs; and the provisions for Gram Sabha or village assembly, involving all adults in the village irrespective of social and economic status, which acts as a village level legislature and accountability mechanism for monitoring the performance of the elected post holders.

Drawing on the equality provisions of the international human rights instruments, Hunt et al maintain that in societies where discrimination is caused by the private actors, the Governments must adopt and enforce laws prohibiting such discrimination. They maintain that in rights based approach, an important implication of the right to equality and the principle of non-discrimination is that it will not be enough to judge progress in terms of aggregate statistics for the poor as a whole. Among the poor, there may be groups that are especially deprived and discriminated against. The human rights approach demands special attention to these groups, in addition to whatever attention is being paid to the poor as a whole.¹²¹ Elaborating on this issue Darrow and Tomas state that, 'all rights-based development decisions, policies, and initiatives, while seeking to empower local participants, are also expressly required to guard against simply ignoring and thus potentially reinforcing existing power imbalances between, for example, women and men, landowners and peasants, and workers and employers'¹²².

The provisions of the PRI amendments and the confirmatory legislations are very much in line with these concerns grounded in human rights. The 33% reservation for women in all elected posts including the posts for chairperson of the panchayats is an important indicator in that respect. Similar is the case with the proportional representation with the scheduled castes and scheduled tribes which belong to the lowest rung of the traditional social hierarchy. The statistics quoted in chapter 3 are

¹²⁰ Quoted in Dreze Jean and Amartya Sen, 'Indian Development and Participation', Oxford University Press 2002 at p375.

¹²¹ Hunt et al, *supra* note 18.

¹²² *Supra* note 1 at 505.

testimony to this fact¹²³. The legally binding provisions for reservations for the disadvantaged groups ensure through the PRI system, that the historically disadvantaged groups according to their proportion in population, and around one million women through 33% reservation, get their share in power and decision making at the local level.¹²⁴

The fact that most of the states have conducted at least two five years terms elections of the Panchayat bodies and that the reservation provisions have been complied with, speaks well about the performance of these provisions¹²⁵. The special attention which a rights based approach gives to the entitlements of the specific disadvantaged groups which has been highlighted by Hunt et al, is taken into account in the case of the PRI by these special provisions. The provisions for the SC and ST groups not only in terms of elected representatives and post holders but also in terms of beneficiary selection and resource allocation for specialised schemes for the SC and ST groups and also for the other below poverty line (BPL) groups, make it possible that the policy and action is oriented towards the specific needs and entitlements of identified disadvantaged groups. The concerns expressed above by Darrow and Tomas regarding the reinforcement of the existing power imbalances in the local level decision making are addressed by these legally binding provisions..

Participation and Empowerment

The rights based understanding of the participation is related to empowerment and implies that the people have the right to determine their path of development. Referring back to the detailed discussion in chapter 2, it has been pointed out that the right to participation is linked with all other rights within the human rights framework¹²⁶. This linkage has been very clearly laid out by Hunt and others in the OHCHR conceptual framework by stressing that the international human rights normative framework includes the right to take part in the conduct of public affairs by referring to the international human rights instruments¹²⁷.

Drawing on the contents of the 73rd and 74th constitutional amendments as discussed in chapter 3, it is interesting to see how close the PRI provisions go with the

¹²³ Chapter 3 contains the statistics related to the percentage of members of disadvantaged groups and women holding position of authority and decision making by virtue of positive discrimination.

¹²⁴ Chapter 3, George Mathew, at note 22.. The existence of more than 3 million elected representatives form largest elected democratic base in the world. Out of this base the equality provisions of the amendments ensure that around one million are women representatives are elected and further, the provision of proportional representation to the disadvantaged castes and tribes which constitute 22.5% of the total Indian population ensure that around 6,60,000 elected members of the disadvantaged groups are elected through these legally binding measures

¹²⁵ There are debates regarding the phenomenon of 'elite capture' in the implementation of these programmes which are mainly related in this context with the implementation of the PRI which varies from state to state in India. As the discussion in its present scope is limited to the legal provision, the implementation aspects would be avoided due to space constraints. See for instance Darrow and Tomas, Supra note 1; George Mathew chapter 3 at note 22; Craig Johnson, Chapter 3 at note 13

¹²⁶ Supra, note 9 at 1019.

¹²⁷ Referring to the international human rights framework Hunt et al draw attention to to the provisions in article 21 of the Universal Declaration of Human Rights, article 25 of iccpr and article 13 paragraph 1 of ICESCR.- OHCHR, Conceptual Framework 2004, Supra note 18 at p19 and foot note 26.

conception of rights defined participation and empowerment as pointed out by Hunt and others. The advancement of civil and political rights within the PRIs can be seen through its provisions of periodic, timely and regular elections; reservation of seats for the elected representatives and post holders within these local governments in favour of the disadvantaged groups and women; devolution of substantial power, decision making and authority to the PRIs and 29 functions related to economic development and social justice. The importance given to the direct democracy in the form of 'gram sabhas' or village assemblies which are constituted by all the adults in the village in decision making for development plans, beneficiaries and also to serve as a watch dog and accountability mechanism for the PRIs is another important empowering mechanism. These provisions relate to the advancement of the civil and political rights through the institutionalisation of local level participatory democracy.

These local level democratic institutions are strengthened by the provisions of local control and decision making over matters related to economic development and social justice as provided by the 29 laid out functions in the Schedule XI of the Constitution (Annexure 2)¹²⁸. The fact that the civil and political rights granted through the election, the decision making say of the 'gram sabhas' through direct democracy and the provisions for positive discrimination for the disadvantaged sections, make it clear that the civil and political rights are advanced in order to create an environment where thus empowered groups could take decisions and participate in development process.

Empowerment Participation and Rights

Commenting on these rights based realisation of pro-poor participation in development outcomes a recent World Bank study notes,

'We find that the programmes that provide benefits such as toilets, housing and the transfers to the poor and disadvantaged (including the provision of BPL card) are more likely to reach the SCs /STs when the gram panchayat has a pradhan(chairperson) who is an SC/ST. This suggests that caste reservations are effective in including the disadvantaged groups into the preview of the local government. It supplements the previous research that finds that women Pradhans in seats reserved for women tend to take decisions more in line with the women'¹²⁹.

Corbridge and others have remarked on the way the notion of citizenship and the cautiousness of rights and entitlements is beginning to grow slowly, a process through which, to use their expression, the state comes 'more clearly and more evenly into the sight lines of citizens'¹³⁰. This is represented through the growing awareness of the people to hold control over the village schools and health visitors and to exert a voice through gram sabhas in the process of distribution of economic resources and opportunities like the Employment Assurance Scheme, which are increasingly seen as a matter of entitlement¹³¹. They highlight the fact that the PRI institutions have brought out the empowerment element within the participatory development by linking the notions of citizenship and entitlements. This optimism is also reflected by Jean Dreze and Amartya Sen when they observe, 'The practice of

¹²⁸ Detailed discussion and sources are referred in chapter 3.

¹²⁹ World Bank: The Political Economy of Gram Panchayats in South Asia, Agricultural and Rural Development Unit South Asian Region, World Bank 2006,p vii, available at www.worldbank.org/documents/southasia

¹³⁰ Corbridge. Stuart et.al, Seeing The State: Governance and Governmentality in India, Cambridge: Cambridge University Press, 2005, p 126.

¹³¹ Ibid,p 126-146.

local democracy is also a form of wider political education ...people are learning (if only at a varying speed) to organize, to question established patterns of authority, to demand their rights, to resist corruption and so on'¹³². The citizen state interactions created and sustained through these institutions of local self governance as envisaged by the PRI amendments show their deep relevance to a rights based approach.

Kannan and Pillai, through a study of Panchayati Raj in the state of Kerala, have reflected on the importance of PRI as a source participatory development having elements of rights based approach. They draw on the definitions of Participatory development which Robert Chambers, respected expert on participatory development, has given regarding an 'empowering process of participation' and see these definitions in the light of principles of human rights as laid out by the human rights instruments. They have tried to differentiate between the participatory development through the informal and loosely formed 'stake-holder groups', advanced by neo-liberal agenda, which are fuelled through government grants and bank loans. They consider that these stake holder groups have little autonomy and lack in political/legal basis which the local self government bodies or locally appropriate democratic political institutions have. The empowering notions of the democratic local bodies like the PRIs are derived through the legal basis and formal existence. Elaborating on the empowering aspects of PRIs Kannan and Pillai observe,

'Since the core of participation includes people as both the agency and the object of development (with participation both the end and the means of development), we feel that individual autonomy, not just voluntariness, in the collectivity defines participation. For implicit in the 'penchant for getting involved' is the notion of the relationship between the self and the society, as well as of self esteem and self-identity in society. In this sense of self realisation in the collectivity, participation becomes a basic human right. And this in turn defines freedom, which is seen as development'¹³³.

The notions and spirit of participation as envisioned in the PRI amendments and the legally defined provisions of the PRI institutions which cover both forms of democratic participation that is the indirect participation through elections at the local level and direct participation through the village assemblies or the gram sabhas, facilitate the devolution of power to the people and create an enabling environment for participatory development through the institutionalisation of local level democracy. The legal framework and design of these provisions match with the concepts of participation and empowerment of a rights based approach to development.

Monitoring, Accountability and Transparency

The human rights based approach to development maintains that the existence of claims becomes meaningful only when methods of accountability for duty bearers exist, because it is only then that a meaningful, rights based and empowered state-citizen interaction can take place ¹³⁴. Apart from the provisions of timely audit and accounts mechanisms through audit authorities, the significant advancement in the

¹³² Supra note 25 at 363.

¹³³ Kannan.K.P, and N.Vijaymohan Pillai, 'Public Action as Participatory Development' in Arjun Sengupta et al.(eds), *Reflection on the Right to Development*, Centre for Development and Human Rights New Delhi and Sage Publications, 2005, p 214-215.

¹³⁴ Detailed discussion in chapter 2.

PRI amendments however are related to the people's involvement in the accountability mechanisms which are of particular relevance for a rights based analysis of the PRIs. The democratic mechanisms of the system ensure an inbuilt accountability by the provisions of timely and periodic elections of the local bodies as the elected executives are expected to deliver results which the voting public expects from them. Another important, effective and locally grounded accountability mechanism is related to the system of direct democracy as enshrined through the gram sabhas or the village assemblies which are constituted of all eligible voters within a gram panchayat area. Among its principal functions are: to review the annual statement of accounts; to review reports of the preceding financial year; to review and submit views on development programmes for the following year; and to participate in the identification of beneficiaries for some government schemes. This last provision is particularly important because it confers substantive authority over an area that is particularly prone to misallocation and corruption¹³⁵.

James Manor has pointed out that the confirmatory legislation adopted by the state of Madhya Pradesh following the PRI amendments are particularly radical in its approach as it gives all powers of the village panchayat to the gram sabha which includes the authority to recall elected representatives on the grounds of non-performance¹³⁶. He states that this is the first example of its kind in direct democracy in the developing world. Some other states in India have followed this example¹³⁷. Dreze and Sen see these accountability mechanisms and the practice based on them as 'the evolution of a culture of political participation, the creation of new forms of social mobilisation, and even changes in public perception of the need for as well as scope for foundational change'¹³⁸. Based on their field study in Eastern India Corbridge and his colleagues remark on the provisions and potentials of the PRI mechanisms by stating,

'A democracy that functions properly at the local level is one way to ensure such accountability. This is one reason why the sponsors of economic reform in India have generally also been proponents of Panchayati Raj and devolution of administrative powers and budgets to local authorities'¹³⁹.

It is perhaps topical to discuss the recent developments related to the building up of heightened awareness and participation of people in holding the duty bearing state and her agencies accountable to the rights holding individuals. There has been a certain amount of energy building up through the empowering provisions of the Panchayati Raj system and the constitutional amendments. The civil society has geared it self to build on this empowering edifice by the persistent demand of strengthening these accountability provisions through the need for collaborative and supportive legislations which complement the constitutionally granted fundamental

¹³⁵ Yatindra Singh, *Decentralised Governance in Madhya Pradesh: Experiences of Gram Sabha in scheduled areas*, Economic and Political Weekly, Oct 5 2002.; Johnson Craig, 'Decentralisation in India: Poverty, Politics and Panchayati Raj', ODI working paper 199, Overseas Development Institute, London, 2003.

¹³⁶ Manor James, 'Madhya Pradesh Experiments with Democracy', Economic and Political Weekly 3rd March 2001; The Madhya Pradesh Panchayati Raj (Amendment) Act 2001, available at www.mp.nic.in.

¹³⁷ Manor James, 'Madhya Pradesh Experiments with Democracy', Economic and Political Weekly 3rd March 2001. Behar. Amitabh, 'Madhya Pradesh: Experiments with Direct Democracy: Time for Reappraisal', Economic and Political Weekly, 17 May 2003.

¹³⁸ Supra note 25 at p 362-263.a

¹³⁹ Supra note 33, at 78.

rights related to freedom of speech and expression¹⁴⁰. Starting from the villages in the state of Rajasthan through its unique mode of 'Jan Sunvai' or public hearing where the organisations like the MKSS¹⁴¹ have facilitated the public hearings in which the people of the village gather together and demand from the elected representatives and public officials to reveal the muster rolls and bills/vouchers related to development spending in the villages concerned and to read out the names of the beneficiaries and the reports of the performance and profile of the ongoing welfare and development schemes and other related activities of public interest¹⁴². Mander and Joshi have pointed out that these methods of civil society engagements in facilitating a people centred and rights based shaping of accountability mechanisms have grown in strength and have lead to the formation of a right to information movement¹⁴³. These sustained movements have resulted in the passing of The Right to Information Act in 2005.¹⁴⁴

Accountability and monitoring mechanisms are very important in the context of a rights based approach to development. The PRI provisions through its decentralised and participatory model of democracy and local self-government have viable systems of accountability which are aimed to be energised through the participation and rights cautiousness of the people. The provision have been varyingly realised across different states in India but the provisions show an existence of the element of rights based approach. Prof Hunt and others have pointed out that the rights based approach recognizes that holding the duty-bearers to account does not necessarily imply having recourse to the courts. There can be both judicial and non-judicial means of accountability – the latter might involve quasi-judicial mechanisms, political devices, administrative arrangements, and civil society institutions¹⁴⁵. It is interesting to note from the above discussion that the accountability mechanisms associated with the PRIs have not only relied on the formal legal mechanisms but have involved substantial amount of non judicial mechanisms through the provision of the gram shabhas and their authority at monitoring and utilising accountability measures. It is perhaps the success of the rights cautiousness being built up around the working of the PRIs, that the civil society organizations like the MKSS have been able to devise innovative accountability and monitoring mechanisms which are inherently and proactively rights based and are more accessible and reachable for the poor. What Prof Hunt and others have referred to as quasi judicial mechanisms of accountability involving political devices, administrative arrangements and civil society institutions, could be seen in practice through the provisions of gram sabhas and also through the innovative rights based methods like the 'Jan Sunvai' used by the civil society organisations like the MKSS.

¹⁴⁰ Mander, Harsh and Abha Joshi, 'The Movement for Right to Information in India: People's Power for the Control of Corruption. Paper delivered at a conference on freedom of information and civil society in Asia Tokyo. Available on line at www.humanrightsinitiative.org/programmes/ai/rti/article.

¹⁴¹ MKSS the Mazdoor Kisan Shakti Sangathan is an activist civil society organization which works for the right to information and strengthening the empowerment and rights realisation of amongst rural and urban populations in Rajasthan and other states in India. see Mander and Joshi-Ibid.

¹⁴² UNDP, HDRC, Decentralization in India: Challenges and Opportunities, Human Development Resource Centre,, UNDP-New Delhi 2001, p4-5.

¹⁴³ Mander and Joshi, Supra note 49.

¹⁴⁴ Right to Information Act 2005-India, available at <http://www.persmin.nic.in/RTI/WelcomeRTI.htm>. The Right to Information Act, makes it legally binding for most government departments to reveal information regarding funds, budgets, beneficiary selections and other vital information related to development schemes and other related activities directly affecting the life and welfare of the people. These provisions are legally binding and justiciable in the event of non- compliance

¹⁴⁵ Hunt. et al, Supra note 15.

The monitoring, accountability and transparency mechanisms are indeed an important part of the provisions of PRI amendments. Their practical utilisation in the field might not be uniform throughout the country but the potentials of their rights based content within their legal framework and with how it has been utilised by the civil society organizations speak a lot about its inherent affinity with a rights based approach.

The above discussion has referred to the linkages of the international human rights framework with the principal provisions of the PRIs. During the course of this discussion each important feature of the rights based approach (which in it self is derived from the international human rights framework¹⁴⁶). As far as the reference to other aspects of the rights based approach like the International Assistance and Cooperation is concerned, it bears highlighting that the PRIs themselves have evolved over time to take their present shape and legally defined framework through the authority of the constitution of India. Since it has not been a product of International Assistance and Cooperation, the context of international cooperation can only be seen in how much efforts there have been made in facilitating the implementation of the PRIs in different states of India and what efforts there have been made to build up the capacity of various actors and agencies involved in strengthening the inherently rights based approach to development by the international community¹⁴⁷. It is again interesting to see that how many of the international agencies, while working with the strengthening of the PRI institutions, categorise their programmes as a 'support of rights based development programme' or simple as 'development cooperation'. Since the scope of this research work was related to the comparative assessment of the framework of the PRIs with the Rights Based Approach, it would be beyond the scope of this work to engage in the discussion of this wide context.

¹⁴⁶ OHCHR conceptual framework supra note 18; Fourth Report of the Independent Expert on the Right to Development, Supra note 7; Hamm Brigitte, Supra note 9; Darrow and Tomas , supra note 1.

¹⁴⁷ The international development agencies like the UNDP, FAO, World Bank, Aisan Development Bank, DFID, SIDA among many others have been doing a great amount of constructive work in this regards- sources from the country offices websites of these agencies, as well as the website of the ministry of panchayati raj and ministry of rural development of the government of India.

Chapter 5

Concluding Remarks

'When Panchayat Raj is established, public opinion can do what violence can never do. The present powers of the zamindars, the capitalists and the rajas can hold sway only so long as the common people do not realize their own strength.... In a Panchayati Raj only the panchayat will be obeyed and panchayats can work only through the law of its own making'.

M.K.Gandhi, 'Question Box', Harijan 1st June 1947¹⁴⁸.

Much of the discussion on a rights based approach to development is directed to the interaction and mutually reinforcing relationships amongst human rights, development and democracy. It is now increasingly accepted that development practice must capture the experiences and perspectives of people themselves, especially the most disadvantaged¹⁴⁹. The emphasis in the rights based approach to development is on the need to ensure, what Alston calls 'an appropriate legal framework' which is not 'too prescriptive'¹⁵⁰. This approach compels deeper analyses of political and social power relationships in the public and private spheres, which according to Darro and Tomas helps to shift the 'focus of analysis to the most deprived and excluded' and gives legitimacy to the concept of social justice¹⁵¹. The focus on the deprived and the excluded in a rights based approach could become meaningful only when the cognisance of the location of the actors is taken with in a normative framework, which is rooted in the local context and culture. Sighting Mamdani and An - Na'im, in relation to human rights and development, Nyamu - Musembi has stated, 'Viewed from this perspective, human rights are both universal and particular: universal because the experience of resistance to oppression is shared among subjugated groups the world over, but also particular because resistance is shaped in response to the peculiarities of the relevant social context'¹⁵².

The above discussion attempts to analyse in what ways the legal framework of the Panchayati Raj Institutions has similarities with the rights based approach to development. The discussion bears reference to the normative and ideological plane of the Indian Constitution in which the PRI legal framework is rooted. Acutely aware

¹⁴⁸ Taken from Mukharjee Rudrangshu(ed), 'The Penguin Gandhi Reader', Navjivan Trust- Penguin Books India, 1993, p253.

¹⁴⁹ Sen. Amartya, Development as Freedom, Oxford University Press, 1999.

¹⁵⁰ Alston. Philip, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate seen through the Lens of the Millennium Development Goals', 27 Human Rights Quarterly 755 (2005) bility in development cooperation', Human Rights Quarterly, 27.2, 2005, p 827.

¹⁵¹ Darro. Mac and Amparo Tomas, 'Power, Capture and Conflict: A call for human rights accountability in development cooperation', Human Rights Quarterly, 27.2, 2005, p 486.

¹⁵² Nyamu- Musembi. Celestine, 'Towards an actor-oriented perspective on human rights', in Naila Kabeer(ed), 'Inclusive Citizenship: Meanings and Expressions', London, Zed Books 2005, p36.

of the social hierarchies and subordination of people and groups existing in the society, the constitution itself has been designed as an instrument of social justice based transformation through its fundamental adherence to the individual dignity and the ideals of justice, equality, liberty and fraternity¹⁵³. This conception of equality and justice according to Dreze and Sen, is of the 'nature of transformative equality' which is geared towards 'social change'¹⁵⁴. In this context the legal framework of panchayati raj 'makes participation a right which in itself politicises economic and social rights' empowering the citizens in the key process of decision- making that enacts policies on how to distribute economic and social resources¹⁵⁵. The Panchayati Raj Institutions coming into force through the 73rd and 74th Indian constitutional amendments which were passed through the Indian parliament in 1992 are also a testimony to the fact that the demand for the empowerment of the rural masses has got translated into democratic deepening, giving what Atul Kohli calls 'legitimacy to the existing democratic institutions of India'¹⁵⁶. The Panchayati Raj Institutions and their legal framework are thus impacted, inspired and effected, through the culturally grounded legitimacy of panchayat tradition and Gandhian ideals of 'antodaya' and 'gram-swaraj', which are combined with the liberal and human rights based principles existing within the Indian Constitution¹⁵⁷. The law in this case is then used as a mechanism for changing power relation in favour of the disadvantaged and building up claims and entitlements for a development outcome and a development process, which is a matter of right not charity.

It is perhaps important to consider in this evaluation that does it matter that the Panchayati Raj amendments do not refer explicitly to human rights based approach to development? The analysis in the preceding pages makes it clear that most of the principle characteristics of the rights based approach to development which are recognized by the international standard setting documents and by highly acclaimed academic writings in this regard, are an integral element of the panchayati raj institutions. The fact that it has been legally defined through constitutional process, and put into practice through a regular and well defined democratic process over a decade now speaks about the practical viability of this system and its rooted ness in the local context. This is a source of strength. The fact that the nomenclature of 'the rights based approach' has not been used as such is due to the fact that the present mandate of the Panchayati Raj Institutions has come up before the wide-spread popularisation of this concept by the international human rights system. The mandate however remains benefited through the international environment regarding the pro-poor approaches in the human rights and development disciplines in the 1980s and early 1990s.

There can be a view-point which may dismiss the credibility of the Panchayati Raj Institutions through a rights based approach. The doubts may emerge on the grounds of the lack of use of the nomenclature. There can also be doubts in some quarters

¹⁵³ Austin. Granville, *Working a Democratic Constitution: The Indian Experience*. New Delhi: Oxford University Press, 1999.

¹⁵⁴ Dreze. Jean and Amartya Sen, *India: Development and Participation*, Oxford University Press, 2002, p 359.

¹⁵⁵ Expressions used after ,Cornwall. A, 'Beneficiary, consumer, citizen: Perspectives on participation for poverty reduction', *Sida Studies* 2, 2000.

¹⁵⁶ Kohli. Atul, 'Introduction' in Atul Kohli (ed), *The Success of India's Democracy*, Cambridge: Cambridge University Press 2001, p 14.

¹⁵⁷ Clarifications on the meanings of 'antodaya' and 'gramswaraj' mentioned at note 10, chapter 1.

because the panchayati raj institutions have not been ‘conceived and directed’ through international development cooperation and ‘locally applied’ by the international agencies. The problem with both these concerns is related to the problem of an inflexible approach within the dominant thinking in certain quarters, on Human Rights and Development. The human rights and development thinking should not be essentialist in seeing everything in a perspective which considers that there can be ‘practice’ only when it has been defined internationally and directed through the international to national scenario. It is interesting to see the evidence of this in many writings on the human rights based approach to development which label and title any work regarding this approach as ‘Human Rights Based Approach to Development Cooperation’. Their exclusive concern remains how the rights based approach is to be transported by the international actors. The word development cooperation immediately conveys this message that the approach is about how significant international organisations and agencies can ‘usher in’ the rights based approach in development at the local level, giving a decided view of the direction of the flows. There is a need to look beyond this approach of relying too much on the nomenclatures and international origins and to recognize and concentrate on the points of similarities in some national practices which might be having some favourable elements related to rights based approach, like the panchayati raj institutions. These kinds of practices can be recognised and then taking them as starting points and as local capital, an agenda of the promotion of rights based approach could be built on the existing favourable factors. This agenda does not exclude the scope of improvements based on international standards and best practices, which might be missing and which need to be added to the existing programmes. It is probably this thinking which is behind the UNDP, FAO, DFID and other international organisation which are now directing funds to promote and strengthen the Panchayati Raj Institutions in India.

The linkages of human rights, development and democracy within the local context of the law, policy and the practice, become crucial factors to study in a rights based approach. An attempt to see the Panchayati Raj through rights based approach, has also been an attempt to see the rights based approach through an existing programme at national level where all the above three factors have been addressed to certain extent. The above assessment of the legal framework and mandate of this system enables to conclude; that the panchayati raj institutions form an example of the right based approach to development. It has the inherent strengths of a defined legal framework which targets the structure of governance in favour of the disadvantaged and empowers the right holding citizens to use their reasoned agency to advance their rights to carve out a life they value.

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