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# Human Rights and Development for India's Rural Remnant: A Capabilities-Based Assessment

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*The cachet that India currently enjoys on the world stage is linked largely to the booming high-tech and service economies associated with its megacities. Yet in terms of sheer numbers, India is not an urban nation. About a third of India's population lives in urban areas, though that figure is rising quickly. One projection indicates that thirty-one villagers will continue to show up in an Indian city every minute over the next forty-three years — 700 million people in all.*

*Lack of sustainable development in rural areas is a major force behind the massive rural-to-urban migration across Asia. An enormous challenge currently facing India and many of its neighbors is thus how to manage the migration. One aspect of that challenge is providing for the nation's rural remnant — for those who are left behind in villages and towns as cities burgeon and sprawl. To mitigate rural-to-urban migration and accommodate growth that is sustainable both environmentally and economically, India must attend to rural development. This means responding to infrastructure deficits in order to meet some very basic needs (e.g., water, sanitation), but it also means providing education and health care, along with rural economic development through strategic thinking about agricultural production and job creation. Meeting this challenge has clear implications for how the nation of India, along with its state and local governments, distribute government resources.*

*This Article considers India's uneven development across the rural-urban axis through the lens of the capabilities framework developed by Amartya Sen and Martha Nussbaum. The capabilities approach argues for universal human rights based on a recognition of each human being “as an*

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agent and an end” and calls for a “threshold level of each capability” below which citizens are not truly functioning as humans. Nussbaum also refers to equality as an aspect of capabilities, linking it in particular to dignity and seeing it as a salient concern in relation to core socioeconomic rights, such as those to health care and education.

Nussbaum’s thinking on capabilities has been greatly informed by her time in India and by the situation there. Further, Nussbaum references the rural-urban axis as among the power disparities relevant to citizens’ realization of capabilities. In using a capabilities frame for assessing India’s approach to rural development, this Article attends particularly to the life, bodily health, and education capabilities, arguing that India should aspire to a degree of parity across the rural-urban axis in providing these foundational capabilities. Further, the Article analogizes rurality to disability and gender as a crucial characteristic to which government should attend in programming to meet the needs of rural citizens. The Article also considers briefly the potential of the Indian Constitution to mitigate distributive inequities associated with government’s relative neglect of rural populations.

Finally, the Article discusses what is at stake for India and the rest of Asia in staking out a path of sustainable development that explicitly considers the rural-urban axis. This path should move beyond the parallel tracks of urban planning and rural development so that development and planning go hand in hand along the rural-urban continuum and across the nation. Regional towns and small cities are sure to be a critical part of any solution to the present state of grossly uneven development.

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Laxmangarh is your typical Indian village paradise, adequately supplied with electricity, running water, and working telephones; and . . . the children of my village, raised on a nutritious diet of meat, eggs, vegetables, and lentils, will be found, when examined with a tape measure and scales, to match up to the minimum height and weight standards set by the United Nations and other organizations whose treaties our prime minister has signed and whose forums he so regularly and pompously attends.

Ha!

Electricity poles — defunct.

Water tap — broken.

Children — too lean and short for their age, and with oversized heads from which vivid eyes shine, like the guilty conscience of the government of India.

ARAVIND ADIGA, *THE WHITE TIGER*<sup>1</sup>

#### INTRODUCTION

Development consists of the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency.

AMARTYA SEN, *DEVELOPMENT AS FREEDOM*<sup>2</sup>

The cachet that India currently enjoys on the world stage is linked largely to the booming high-tech and service economies associated with megacities like Mumbai, Delhi, and Bangalore.<sup>3</sup> Yet in terms of sheer numbers, India is not an urban nation.<sup>4</sup> Only about a third of

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<sup>1</sup> ARAVIND ADIGA, *THE WHITE TIGER* 16 (2008).

<sup>2</sup> AMARTYA SEN, *DEVELOPMENT AS FREEDOM*, at xii (1999).

<sup>3</sup> See Akash Kapur, *Birth Pangs of a Brash New Country*, N.Y. TIMES, Sept. 10, 2009, <http://www.nytimes.com/2009/09/11/world/asia/11iht-letter.html?scp=1&sq=birth+pangs+brash+new+country&st=nyt>; Jim Yardley, *Drought Puts Focus on a Side of India Left Out of Progress*, N.Y. TIMES, Sept. 5, 2009, <http://www.nytimes.com/2009/09/05/world/asia/05drought.html?scp=1&sq=drought%20india%20yardley&st=cs> (contrasting “power breakfast in New Delhi for many of the country’s corporate leaders and top economic officials” with Andhra Pradesh farming village where drought had decimated harvest).

<sup>4</sup> India uses two principal definitions of “urban.” One is “statutory towns,” which are considered urban because of their form of local government. They include all places with a municipality, corporation, municipal board, cantonment board, or notified area council, etc. Tiago Wandschneider & Pravas Mishra, *The Role of Small Rural Towns in Bolangir District, India: A Village-Level Perspective* 2 n.2 (Natural Res.

India's population live in cities, although that figure is rising quickly and is projected to reach 36% by 2026 — about half a billion people.<sup>5</sup> During the same time frame, the number of megacities — those with one million or more in population — is expected to double, to about seventy.<sup>6</sup> One estimate indicates that thirty-one villagers will show up in an Indian city every minute for about the next four decades — 700 million people in all.<sup>7</sup> In short, urban populations will continue to grow much faster in coming years than will rural populations,<sup>8</sup> and that lopsided growth will be attributable more to migration than to natural growth. At the same time, “[t]wo-thirds of the country's GDP, and 90% of government revenues, emanate from urban India.”<sup>9</sup> In the words of one journalist:

Gandhi famously said that the soul of India was to be found in its villages. The center of gravity has shifted. Indian cities, charged with the hopes and aspirations and frustrations of millions of rural migrants, have become crucibles of the

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Inst. Report No. 2750, June 2003). Such statutory towns were home to 87.4% of the nation's urban population in 1991. Tim Dyson & Pravin Visaria, *Migration and Urbanization Retrospect and Prospects*, in TWENTY-FIRST CENTURY INDIA: POPULATION, ECONOMY, HUMAN DEVELOPMENT AND THE ENVIRONMENT 108, 115 (Tim Dyson et al. eds., 2004) [hereinafter TWENTY-FIRST CENTURY INDIA].

The other definition is “census towns,” which are “all other places which have a minimum population of 5,000, at least 75% of the male working population engaged in non-agricultural and allied activities, and a population density of at least 400 persons per square km (or 1,000 persons per square mile).” Wandschneider & Mishra, *supra*, at 4.

Because of the tax consequences of falling into either category, many residents of areas that match these criteria “prefer to retain their rural status.” Dyson & Visaria, *supra*, at 115.

<sup>5</sup> See Dyson & Visaria, *supra* note 4, at 5 (reporting urban population of 28% in 2001). “Whereas in 2001 there were 35 ‘million-plus’ cities, it seems likely that there will be nearly 70 such cities by 2026, and because the urban population is becoming increasingly concentrated, these 70 cities could contain around half of all the country's urban inhabitants. The largest urban agglomerations — Delhi and Greater Mumbai — will probably each contain 30 million people. Everywhere urban populations will grow much faster than their rural counterparts; more than half of all India's population growth in the period to 2026 is likely to end up living in the urban sector.” *Id.* In 1901, only 11% of Indians lived in urban places. Kapur, *supra* note 3 (reporting urban population of 30% in 2009).

<sup>6</sup> See Dyson & Visaria, *supra* note 4, at 5.

<sup>7</sup> See Anand Giridharadas, *Rumbling Across India to a New Life in the City*, N.Y. TIMES, Nov. 25, 2007, [http://www.nytimes.com/2007/11/25/world/asia/25migrants.html?ref=anand\\_giridharadas](http://www.nytimes.com/2007/11/25/world/asia/25migrants.html?ref=anand_giridharadas).

<sup>8</sup> See Dyson & Visaria, *supra* note 4, at 5 (noting that more than half of all India's population growth between 2001 and 2026 will likely live in urban places).

<sup>9</sup> Kapur, *supra* note 3.

modern nation. It is in the cities — in the big metropolises like Mumbai and Bangalore, but also in the thousands of smaller towns that have swollen over the last couple of decades — that the future of India is being shaped.<sup>10</sup>

That urban center of economic gravity and the concomitant poverty and lack of opportunity in the countryside are both the cause and consequence of contemporary migration patterns in India. That migration is, in short, one “of despair.”<sup>11</sup> It is a migration that “depresses wage-rates, denudes rural areas of innovators,” and “leads to rising social costs of urban poverty,” all without actually reducing chronic poverty.<sup>12</sup> As such, it is hardly a tenable or sustainable solution to a nation’s social or economic woes.<sup>13</sup>

India’s dramatically uneven development places enormous strain on that nation’s rural population, as well as on the various scales of government that serve them. This urbanization juggernaut thus challenges the nation of India and its component government entities<sup>14</sup> — along with international donors and development agencies engaged there — to consider the extent to which urbanization is the answer to India’s woes, as well as the ways in which a metrocentric development path creates as many problems as it solves.<sup>15</sup> If urbanization,

<sup>10</sup> *Id.*

<sup>11</sup> Axel Wolz, GLOBAL DONOR PLATFORM FOR RURAL DEVELOPMENT, THE ROLE OF AGRICULTURE AND RURAL DEVELOPMENT IN ACHIEVING THE MILLENNIUM DEVELOPMENT GOALS — A JOINT NARRATIVE 16 (2005), available at <http://www.donorplatform.org/load/9509>.

<sup>12</sup> *Id.*

<sup>13</sup> See *id.* at 16-17 (describing that rural-to-urban migration is not generally seen as indicator of economic growth unless it is followed by nation’s improved agricultural productivity). See also Lydia Polgreen, *New Arrivals Strain India’s Cities to Breaking Point*, N.Y. TIMES, Nov. 30, 2010, [http://www.nytimes.com/2010/12/01/world/asia/01delhi.html?\\_r=1&scp=1&sq=india%20city&st=cse](http://www.nytimes.com/2010/12/01/world/asia/01delhi.html?_r=1&scp=1&sq=india%20city&st=cse) [hereinafter *New Arrivals*] (discussing some infrastructure and capacity problems created by rapid urban growth).

<sup>14</sup> The Constitution of India allocates responsibilities to both the central government and state governments. BISWARANJAN MOHANTY, CONSTITUTION, GOVERNMENT AND POLITICS IN INDIA: EVOLUTION AND PRESENT STRUCTURE 134 (2009). See INDIA CONST. Seventh sched. It also includes entire sections outlining Fundamental Rights of its citizenry, as well as directive principles upon which the central, state, and local governments should form their policies. MOHANTY, *supra*, at 134. See INDIA CONST. pts. III, IV (outlining Fundamental Rights of every citizen of India, which are enforceable by law and Directive Principles of State Policy, which are not directly enforceable by law).

<sup>15</sup> See Lisa R. Pruitt, *Migration, Development, and the Promise of CEDAW for Rural Women*, 30 MICH. J. INT’L L. 707, 725-27 (2009) [hereinafter *The Promise of CEDAW for Rural Women*]; see also Dyson & Visaria, *supra* note 4, at 122-25; Kapur, *supra* note 3.

particularly in the form of megacities, is not optimal, what form(s) should India's development take? What should the development priorities be, and how can India distribute government resources in order to foster them?

This Article takes up these questions and others with particular attention to what I call India's "rural remnant" — those left behind in what are popularly referred to as villages by the urban migration juggernaut. In particular, I look at how India's economic and development policies under-serve rural populations, thus fueling the migration. While India provides the specific context for this analysis, many of the observations are relevant to the rest of Asia and, indeed, the world. Rural-to-urban migration is a powerful phenomenon worldwide, and Asia is a "hot spot" for it.<sup>16</sup> One reason is that a rural-urban income gap persists in Asia, even as it has narrowed in recent decades in much of the world.<sup>17</sup> Agriculture and rural-related activities provide the livelihoods of three-quarters of the world's poor,<sup>18</sup> a great many of them in Asia.<sup>19</sup> If poverty alleviation and endowment with capabilities is the goal, policy makers must attend to the rural context in which so many of the world's poor live.<sup>20</sup>

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<sup>16</sup> In China, for example, over 32% of the 34.1 million migrants during the period between 1985 and 1990 were internal migrants. See Canfei He & Patricia Gober, *Gendering Interprovincial Migration in China*, 37 INT'L MIGRATION REV. 1220, 1226 (2003). More recent estimates suggest that about 126 million rural Chinese workers, 70% of whom are men, now work in cities. *Rural Women Left Behind at Home Need Attention*, ALL-CHINA WOMEN'S FEDERATION (Oct. 8, 2008), [www.womenofchina.cn/issues/marriage\\_family/206759.jsp](http://www.womenofchina.cn/issues/marriage_family/206759.jsp). In Vietnam, 4.3 million were internal migrants, compared to the 300,000 who migrated abroad. Ronald Skeldon, *Migration and Poverty: Some Issues in the Context of Asia*, in INT'L ORG. FOR MIGRATION, WORLD MIGRATION 2005: COSTS AND BENEFITS OF INTERNATIONAL MIGRATION 253, 261 n.29 (2005) [hereinafter WORLD MIGRATION 2005]. Richard Bilborrow comments on the dearth of information about internal migration in developing countries, as well as the consequences of this knowledge gap for development and other efforts. See Richard E. Bilborrow, *The State of the Art and Overview of the Chapters*, in MIGRATION, URBANIZATION, AND DEVELOPMENT: NEW DIRECTIONS AND ISSUES 1, 3, 21 (Richard E. Bilborrow ed., 1998); see also Wolz, *supra* note 11, at 1 (noting poverty's relation to "unmanaged migratory currents"); Jason DeParle, *Global Migration: A World Ever More on the Move*, N.Y. TIMES, June 27, 2010, at WK1.

<sup>17</sup> WORLD BANK, WORLD DEVELOPMENT REPORT 2008: AGRICULTURE FOR DEVELOPMENT, at 47 & fig.A2, available at [http://siteresources.worldbank.org/INTWDR2008/Resources/WDR\\_00\\_book.pdf](http://siteresources.worldbank.org/INTWDR2008/Resources/WDR_00_book.pdf).

<sup>18</sup> Wolz, *supra* note 11, at 5, 11.

<sup>19</sup> *Id.* at ii. Thirty-one percent (430 million) of the world's total poor (1.1 billion) live in South Asia. *Id.* at 1.

<sup>20</sup> *Id.* at 1; WORLD BANK, *supra* note 17, at 45-49.

I consider the situation of India's rural poor through the lens of capabilities, a framework developed by Amartya Sen and Martha Nussbaum.<sup>21</sup> This capabilities approach to thinking about development and human rights moves beyond a focus on metrics such as GDP, which cast twenty-first century India in a favorable light.<sup>22</sup> The capabilities framework considers what individual citizens enjoy and are able to do<sup>23</sup> and calls for a minimum threshold that each individual should enjoy of each of a number of capabilities.<sup>24</sup> Below this threshold level, Nussbaum maintains, citizens are not truly functioning as humans.<sup>25</sup> While Nussbaum enumerates ten capabilities,<sup>26</sup> I focus on three in relation to my consideration of rural

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<sup>21</sup> One key difference between the capabilities articulations of Sen and Nussbaum is that the latter enumerates a list of central capabilities, while the former is unwilling to do so. MARTHA C. NUSSBAUM, *FRONTIERS OF JUSTICE* 166 (2006).

<sup>22</sup> See Afra Afsharipour, *Corporate Governance Convergence: Lessons from the Indian Experience*, 29 *NW. J. OF INT'L L. & BUS.* 335, 349 (2009) (characterizing India as one of the fastest growing economies in the world); see also MARTHA C. NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* 32-33 (2000) [hereinafter *WOMEN AND HUMAN DEVELOPMENT*] (noting that rapid economic growth can leave powerless behind and that such growth does not necessarily improve situation regarding health care and literacy). Nussbaum also notes that the capabilities framework's use to make "comparisons of life quality" and, thus, provide an alternative to "standard measures, such as GNP per capita and utility" is a secondary, "weaker," use than its role as "philosophical underpinning for . . . basic constitutional principles." *Id.* at 5-6.

<sup>23</sup> See *infra* notes 216-17 and accompanying text.

<sup>24</sup> See *infra* notes 218 and accompanying text.

<sup>25</sup> See *infra* notes 218 and accompanying text.

<sup>26</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 76-78. These are:

1. *Life*. Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. *Bodily Health*. Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. *Bodily Integrity*. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. *Senses, Imagination, and Thought*. Being able to use the senses, to imagine, think, and reason — and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways

development<sup>27</sup> in India: (1) life, (2) bodily health, and (3) education.<sup>28</sup> I do so because these three are foundational to the realization of most

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protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non beneficial pain.

5. *Emotions*. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

6. *Practical Reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)

7. *Affiliation*.

a. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

b. Having the social bases of self-respect and non humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

8. *Other Species*. Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. *Play*. Being able to laugh, to play, to enjoy recreational activities.

10. *Control over one's Environment*.

a. *Political*. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.

b. *Material*. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

Nussbaum's list is not set in stone. She recognizes that it may require editing or additions in the future. *Id.*

<sup>27</sup> "Rural development" might be seen as a redundant term because only rural areas are, almost by definition, undeveloped and, therefore, in need of development. I assume, however, that rural livelihoods and economies can be developed and



other capabilities.<sup>29</sup> Indeed, both Sen and Nussbaum sometimes set these three apart as a cluster, inviting analysis of them as related and yet distinct from other capabilities, which are more in the nature of civil and political rights.<sup>30</sup>

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diversified in ways that do not necessarily result in urbanization. See Lisa R. Pruitt, *Deconstructing CEDAW's Article 14: Naming and Explaining Rural Difference*, 17 WM. & MARY J. WOMEN & L. 347 (2011) [hereinafter *Deconstructing CEDAW's Article 14*]; see also *infra* note 285 and accompanying text (discussing Escobar and the issue of individual autonomy in relation to development).

<sup>28</sup> Nussbaum expresses and categorizes education as an aspect of the capability she labels "Senses, Imagination, and Thought." NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 76.

<sup>29</sup> Professor Jennifer Prah Ruger, for example, writes of "central health capabilities [as] prerequisites for other capabilities, such as developing abilities, using talents, and carrying out plans" associated with the other capabilities. Jennifer Prah Ruger, *Global Health Justice*, 2 PUB. HEALTH ETHICS 261, 268 (2009). Ruger asserts that "certain aspects of health capability sustain other aspects of human flourishing, because without life itself, no other human functionings are possible." *Id.* at 266. She continues: "Health needs — for physician care and medication, for instance — map directly to health functionings, which in turn map to health capabilities." *Id.*; see also Jennifer Prah Ruger, *Health, Capability, and Justice: Toward a New Paradigm of Health Ethics, Policy and Law*, 15 CORNELL J.L. & PUB. POL'Y 403, 407-08 (2006). Professor Gregory Alexander similarly writes, "life, including certain subsidiary values such as health" is among the functionings "necessary for a well-lived life." Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745, 764-65 nn.72-73 (2009) (listing freedom to make deliberate choices, practical reasoning, and sociality as among other functionings). It is not clear, however, that Nussbaum would agree with the prioritization of these capabilities. Indeed, it might not be within the spirit of Nussbaum to focus on one capability (or a few) to the neglect of others. See Michael Ashley Stein & Penelope J.S. Stein, *Beyond Disability Civil Rights*, 58 HASTINGS L.J. 1203, 1217-18 (2008).

To be considered just political arrangements under Nussbaum's capability scheme, States must provide sufficient resources to enable people to be raised up to the basic threshold level of ten central capabilities. Further, since each capability is a separate component in her theory, States cannot provide for one capability beyond the threshold (for instance, a superlative healthcare system), while denying or limiting another (e.g., denying women the franchise or limiting its salience).

*Id.* at 1217-18 (footnotes omitted).

<sup>30</sup> In grappling with requirements of adequacy versus equality of capabilities, Nussbaum generally advocates only adequacy in relation to socioeconomic-type rights. NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 292-93. With respect to education and health care, however, she suggests that "adequacy does appear to require something close to equality." *Id.* at 294; see also *infra* text accompanying notes 238-43.

As for Sen, he links "unfreedom" to poverty's consequences, writing about health care and education in particular. Sen states that sometimes "unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological

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In Part I, I provide a statistical portrait of poverty in India, with particular attention to differences across the rural-urban axis. That part includes a brief history of Indian development, including poverty amelioration efforts, with a particular focus on investments and interventions in the agricultural and other rural sectors. It documents rural-urban disparities in infrastructure and services that have a direct impact on life and bodily health (e.g., water, sanitation and health care) and also discusses investment in education. This part illustrates rural disadvantage so that I can analyze these disparities through the lens of capabilities theory in Part II. There, I argue that many among India's rural remnant are denied the core capabilities that would permit them to flourish as human beings and enjoy a wider range of capabilities. I further assert that — consistent with capabilities thinking and, indeed, with its own Constitution — India has an obligation to provide adequately for its rural residents.

Throughout this Article, I draw illustrations of rural disadvantage from Aravind Adiga's *The White Tiger*, an award-winning novel that features an Indian story of rural-to-urban migration. The tale of Balram, the novel's central character and narrator, illustrates and enriches this discussion about life and deprivation in rural India. While *The White Tiger* is a work of fiction, the novel's depiction of rural disadvantage and the government corruption<sup>31</sup> that further entrenches it closely reflects what data, empirical studies, and media reports tell us about contemporary India.

Indeed, Adiga has opined elsewhere about the way in which Indian development should proceed in order to bridge the rural-urban

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programs, or of organized arrangements for health care or educational facilities, or of effective institutions for the maintenance of local peace and order." SEN, DEVELOPMENT AS FREEDOM, *supra* note 2, at 4. Elsewhere he writes, "social opportunities of . . . health care, which may require public action, complement individual opportunities of economic and political participation and also help to foster our own initiatives in overcoming our respective deprivations." *Id.* at xii.

<sup>31</sup> See NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 103; Akash Kapur, *Prying Open India's Vast Bureaucracy*, N.Y. TIMES, June 17, 2010, <http://www.nytimes.com/2010/06/18/world/asia/18iht-letter.html?scp=5&sq=india%20corruption&st=cse> (discussing India's corrupt bureaucracy); Lydia Polgreen, *Right-to-Know Law Gives India's Poor a Lever*, N.Y. TIMES, June 29, 2010, <http://www.nytimes.com/2010/06/29/world/asia/29india.html?hp> [hereinafter *Right-to-Know*] (making many references to corruption among local officials in relation to services provided, especially in rural areas); Heather Timmons, *In India, New Crusade on Corruption*, N.Y. TIMES, July 31, 2009, at B5; Jim Yardley, *India Asks, Should Food Be a Right for the Poor?*, N.Y. TIMES, Aug. 9, 2010, [http://www.nytimes.com/2010/08/09/world/asia/09food.html?\\_r=1&th&emc=th](http://www.nytimes.com/2010/08/09/world/asia/09food.html?_r=1&th&emc=th) (reporting that 70% of roughly \$12 billion food aid budget is wasted, stolen, or absorbed by bureaucratic and transportation costs).

divide.<sup>32</sup> He proposes policies to encourage moderate growth in a greater number of urban clusters that would be considerably smaller than the mega metropolises that presently dominate India. Adiga contends that such intermediate cities would facilitate job growth and improve living space, thus fostering a more humane and moderate rural-to-urban transition. Like Adiga, I believe that a nationally coordinated approach to India's economic and population growth is desirable. Such an approach would attend to both rural development and urban planning, while also seeing these endeavors as closely related. Indeed, the United Nations International Fund for Agricultural Development ("IFAD") has endorsed this approach in its *Rural Poverty Report 2011*, noting the benefits rural populations garner from regional towns and small cities.<sup>33</sup>

## I. THE INDIAN SITUATION

### A. Poverty Across the Rural-Urban Axis

India has more poor people, as measured by income alone, than any country in the world — about 300 million<sup>34</sup> or roughly one-third of the world's total poor.<sup>35</sup> Both India's central and state governments have long financed antipoverty initiatives, but these have not proved particularly effective.<sup>36</sup> Nevertheless, the poverty rate in India declined

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<sup>32</sup> *Marketplace: Reading 'Between the Assassinations'* (American Public Media broadcast June 25, 2009), [http://marketplace.publicradio.org/display/web/2009/06/25/pm\\_assassinations\\_q/](http://marketplace.publicradio.org/display/web/2009/06/25/pm_assassinations_q/) (interview with Aravind Adiga, in which he suggests creation of small urban centers as key to sustainable future for India).

<sup>33</sup> IFAD, *RURAL POVERTY REPORT 2011*, at 189 (2011), available at [http://www.ifad.org/rpr2011/report/e/print\\_rpr2011.pdf](http://www.ifad.org/rpr2011/report/e/print_rpr2011.pdf) (noting the "widespread market opportunities" associated with regional towns and small cities; "Indian villages closer to towns and cities have a better record of reducing poverty" and noting that "[d]ispersed patterns of urbanization" are associated with growth of the "non-farm economy").

<sup>34</sup> Robert Cassen & Kirsty McNay, *The Condition of the People*, in *TWENTY-FIRST CENTURY INDIA*, *supra* note 4, at 178, 181. "Using an international poverty line of \$1 per day (measured at a 1993 purchasing power parity exchange rate), about one third of the poor in the mid-1990s lived in India." Gaurav Datt & Martin Ravallion, *Is India's Economic Growth Leaving the Poor Behind?*, 16 *J. ECON. PERSP.* 89, 90 (2002), available at [http://siteresources.worldbank.org/INTPGI/Resources/13504\\_GD1.pdf](http://siteresources.worldbank.org/INTPGI/Resources/13504_GD1.pdf).

<sup>35</sup> See *100 Million More Indians Now Living in Poverty*, *HINDUSTAN TIMES*, Apr. 19, 2010, <http://www.hindustantimes.com/rssfeed/newdelhi/100-million-more-Indians-now-living-in-poverty/Article1-533202.aspx>.

<sup>36</sup> Such initiatives account for sizable expenditures nationally (about 8% from 1993–94 to 1995–96). Cassen & McNay, *supra* note 34, at 186 (citing World Bank 1997a: 26) (reporting that these averaged little less than 6% of Central Plan Budgetary

by half between 1973 and 2005, falling from 55% to 27%.<sup>37</sup> More recent data, however, suggest that poverty is once again on the rise, measuring 37% in 2010.<sup>38</sup>

While poverty levels dropped across the nation in the last few decades of the twentieth century,<sup>39</sup> rural poverty rates have consistently exceeded urban poverty rates and continue to do so.<sup>40</sup> Recent estimates indicate that nearly three quarters of India's "income poor"<sup>41</sup> live in rural areas,<sup>42</sup> and half of those living in rural areas are

Expenditures in 1990–91 and 1992–93). State-level spending adds another 20–25%. *Id.* at 186 (citing World Bank 1997a: 26).

<sup>37</sup> Dewaram A. Nagdeve, *Population, Poverty and Environment in India IIPS Research Brief No. 6*, at 1 (Dec. 2008), available at <http://www.iipsindia.org/pdf/IIPS%20Research%20Brief%20No.%206.pdf>; *Poverty Estimates for 2004–05*, GOV'T OF INDIA, PRESS INFO. BUREAU 4 (Mar. 2007), available at <http://www.planningcommission.gov.in/news/prmar07.pdf> [hereinafter *Poverty Estimates*]. Though the proportion of the population living in poverty declined, the number of rural poor "remained more or less stable at around 320 million" because the population increased. N. MUKUNDAN, RURAL DEVELOPMENT AND POVERTY ERADICATION IN INDIA 22 (2009). Nevertheless, 300 million "joined the non-poor group during the twenty year period between 1973–74 and 1993–94." Still, these figures suggest a need to contain population growth. *Id.*

<sup>38</sup> *100 Million More Indians*, *supra* note 35. This is contrary to a prediction by the Government of India that poverty rates would decline to 21.1% in rural areas and to 15.1% in urban areas by 2007. MUKUNDAN, *supra* note 37, at 24 tbl.2.2.

<sup>39</sup> MUKUNDAN, *supra* note 37, at 22.

<sup>40</sup> While 56.4% of the rural population lived below the poverty line in 1973–74, that figure had dropped to 37.3% by 1993–94. MUKUNDAN, *supra* note 37, at 22 tbl.2.1; *Poverty Estimates*, *supra* note 37, at 6. In urban areas, the percentage declined from 49.0% in 1973–74 to 32.4% in 1993–94. *Id.* at 6. The latest estimates for 1999–2000 show that poverty in rural areas declined to 27.1% and in urban areas to 23.6%. MUKUNDAN, *supra* note 37, at 23.

<sup>41</sup> The internally recognized poverty threshold is \$1/day. Wolz, *supra* note 11, at 1.

<sup>42</sup> *Poverty Estimates*, *supra* note 37, at 4. Seventy-two million people live below the poverty line in India, and 220.92 million of them live in rural areas. *Id.* The agencies responsible for compiling India's poverty data calculated the 2004–05 poverty figures using a different measurement than in previous years. Instead of the 365-day "recall period" previously used, the agencies used a 30-day period for the 2004–2005 survey. The "recall period" refers to the memory period of the survey respondent. The survey asked respondents about expenditures in the last 30 days instead of the last year. The longer recall period came under criticism due to the limited capacities of memory. See also Shenggen Fan et al., *Government Spending, Growth and Poverty in Rural India*, 82 AMER. J. AGR. ECON. 1038, 1038 (2000) [hereinafter Fan et al., *Government Spending*], available at <http://www.ifpri.org/sites/default/files/publications/eptdp33.pdf> (noting rural poverty decline from 50–65% prior to the mid-1960s to about one-third of rural population by early 1990s); see generally *Poverty Estimates*, *supra* note 37, at 4; Santhosh T. Varghese, *Poverty Recall Periods*, [http://www.santhoshtv.in/Poverty\\_Recall%20periods.pdf](http://www.santhoshtv.in/Poverty_Recall%20periods.pdf) (last visited Apr. 23, 2010). In absolute numbers, 244 million people live below the poverty line in rural areas, while 76.3 million urban residents are impoverished. MUKUNDAN, *supra* note 37, at 22.

impoverished.<sup>43</sup> In thirty of India's thirty-five combined states and territories, rates of rural poverty exceed those for urban poverty.<sup>44</sup>

This comparison between poverty in rural and urban locales suggests a need for enhanced infrastructure and other types of investment in rural areas. Indeed, because rural places are by definition less developed,<sup>45</sup> rural locales are important sites of various sorts of development interventions. Both the Indian central government and the states have long financed antipoverty initiatives, but these have not proved particularly effective.<sup>46</sup> These programs' impact is limited in

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<sup>43</sup> Ashok Vikhe Patil et al., *Current Health Scenarios in Rural India*, 10 *AUST. J. RURAL HEALTH* 129, 129 (2002) (measuring poverty by \$1/day standard and indicating rural population of 718 million, but offering no date or time frame for data).

<sup>44</sup> Nagdeve, *supra* note 37, at 2. The states with higher poverty ratios in urban areas are Uttar Pradesh, Andhra Pradesh, Gujarat, Haryana, Kerala, and Rajasthan. *Id.* However, the fact that rural poverty is lower than urban poverty in Uttar Pradesh is hardly laudable when one considers that it is one of the three poorest states in India. Compare MUKUNDAN, *supra* note 37, at 22 (noting that, in absolute numbers, 244 million people live below the poverty line in rural areas, while 76.3 million urban residents are impoverished), with Aasha Kapur Mehta & Amita Shah, *Chronic Poverty in India: Incidence, Causes and Policies*, 31 *WORLD DEV.* 491, 492-93 (2003), available at <http://www.pik-potsdam.de/research/research-domains/transdisciplinary-concepts-and-methods/project-archive/favaia/workspace/documents/world-development-volume-31-issue-3-special-issue-on-chronic-poverty-and-development-policy/pages491-511.pdf> (noting that one-third of India's population and almost half of India's poor and are concentrated in three states: Madhya Pradesh (including Chhatisgarh), Uttar Pradesh (including Uttaranchal), and Bihar (including Jharkhand)). Mehta and Shah further observe a growing rural poverty differential between India's five lowest income states (Bihar, Uttar Pradesh, Madhya Pradesh, Orissa, and Rajasthan) and the rest of India's thirteen largest states (West Bengal, Punjab, Haryana, Maharashtra, Rajasthan, Tamil Nadu, Madhya Pradesh, Andhra Pradesh, Karnataka, Kerala, Gujarat, Orissa, Uttar Pradesh, and Bihar). WORLD BANK, *INDIA: REDUCING POVERTY, ACCELERATING DEVELOPMENT* 17 (2000), available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/08/19/000094946\\_00080705302130/Rendered/PDF/multi\\_page.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/08/19/000094946_00080705302130/Rendered/PDF/multi_page.pdf). The gap in rural poverty between these groups of states was 7-8% in the 1980s. By 1997, the gap of poverty incidence between the two groups increased to 18%. Further, poverty incidence in low-income states was more than 50% greater than in the other largest states. *Id.*

<sup>45</sup> Indeed, the term "rural development" is arguably redundant if only rural places need development. See Pruitt, *Deconstructing CEDAW's Article 14*, *supra* note 27, at 353; see also Marc Mormont, *Who Is Rural? Or, How To Be Rural: Towards a Sociology of the Rural*, in *RURAL RESTRUCTURING: GLOBAL PROCESSES AND THEIR RESPONSES* 21, 28 (Terry Marsden et al. eds., 1990) (noting that rural sociology "take[s] for granted that its subject was the least developed regions and least integrated areas" in relation to economic and industrial development).

<sup>46</sup> Such initiatives account for sizable expenditures nationally (i.e., about 8% from 1993-94 to 1995-96). Cassen & McNay, *supra* note 34, at 186 (citing World Bank 1997a: 26) (reporting that these averaged little less than 6% of Central Plan Budgetary Expenditures in 1990-91 and 1992-93). State-level spending adds another 20-25%. *Id.*

part because benefits intended for the poor instead “leak to the less poor.”<sup>47</sup> In the next subpart, I provide a brief overview of India’s postcolonial development, with particular attention to rural-urban difference and to the types of investment deployed in the rural sector.

### B. A Short History of Indian Development

Following independence at the middle of the twentieth century, India’s development strategy was one of heavy industrialization, a process that often came at the expense of the agricultural sector.<sup>48</sup> Between 1951 and 1956, for example, the Indian government allocated 31% of its budgets to the agricultural sector, but government expenditures on the rural sector fell to approximately 20-25% over the next five years.<sup>49</sup> Investment in rural development has since continued to decline, with many “urban and growth-oriented” development initiatives largely neglecting rural India.<sup>50</sup> As one scholar expresses it, policies concentrating on economic growth rather than on “equity and equality, have widened the gap between ‘urban and rural’ and ‘haves and have-nots.’”<sup>51</sup> Indeed, rural-urban income gaps remain wider across Asia than in any other world region.<sup>52</sup> Meanwhile, IFAD’s *Rural Poverty Report 2011* categorizes India as a nation with a “high level of hunger and slow progress in improving it.”<sup>53</sup>

Fostering sustainable economic growth and development is the most effective way to increase overall welfare for India’s rural population.<sup>54</sup>

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<sup>47</sup> *Id.*; see also Lydia Polgreen, *Indian State Empowers Poor to Fight Corruption*, N.Y. TIMES, Dec. 2, 2010, [http://www.nytimes.com/2010/12/03/world/asia/03india.html?\\_r=1&emc=tnt&tntemail=y](http://www.nytimes.com/2010/12/03/world/asia/03india.html?_r=1&emc=tnt&tntemail=y) (discussing a new program “aimed at ensuring that the benefits of government programs for the poor actually go to the poor”; noting that Rajiv Gandhi “famously estimated that only 15% of every rupee spent on the poor actually reached them”).

<sup>48</sup> Shenggen Fan et al., *Rural and Urban Dynamics and Poverty: Evidence from China and India* 12 (Int’l Food & Pol’y Res. Inst., FCND Discussion Paper No. 196, 2005) [hereinafter Fan et al., *Rural and Urban Dynamics*].

<sup>49</sup> *Id.*

<sup>50</sup> Patil et al., *supra* note 43, at 129.

<sup>51</sup> *Id.*

<sup>52</sup> WORLD BANK, *supra* note 17, at 40, 45-48.

<sup>53</sup> RURAL POVERTY REPORT 2011, *supra* note 33, at 51 tbl.1 (referring to “Progress on vulnerability, 1990s to 2000s”).

<sup>54</sup> See generally Ravi Kanbur & Xiaobo Zhang, *Fifty Years of Regional Inequality in China: A Journey Through Central Planning, Reform, and Openness*, in SPATIAL DISPARITIES IN HUMAN DEVELOPMENT: PERSPECTIVES FROM ASIA 93, 99 (Ravi Kanbur et al. eds., 2006) [hereinafter SPATIAL DISPARITIES] (asserting that, in China, when agriculture is primary means of production, local economic growth is hindered while more diverse economic structure, which results in larger revenue base is conducive to

Sustainable initiatives lead eventually to generation of revenues for future government projects, thereby providing a long-term solution for rural poverty.<sup>55</sup> When it has invested in the rural sector, the Indian government has devoted resources to both agricultural and nonagricultural growth. Conventional wisdom holds that the former leads indirectly to poverty alleviation by increasing mean consumption.<sup>56</sup> The creation of rural nonfarm jobs and higher wages,<sup>57</sup> on the other hand, tends to have greater “trickle down” benefits for the poor because it raises mean income and enhances income distribution.<sup>58</sup>

Studies of the period 1970-1993 show a positive correlation between direct investment in rural infrastructure and agriculture on the one hand, and poverty reduction on the other.<sup>59</sup> The increased investment resulted in greater agricultural productivity, which slowed when funds were subsequently reduced.<sup>60</sup> In spite of the widespread economic significance of agricultural production, it lagged behind the nonagricultural sector in the 1990s, with the former growing only

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economic development); Wolz, *supra* note 11, at 42 (calling for “change of the institutional setting to enable pro-poor growth”).

<sup>55</sup> Fan et al., *Government Spending*, *supra* note 42, at 1038; see also SEN, DEVELOPMENT AS FREEDOM, *supra* note 2, at 3 (noting need for economic growth to generate tax revenue for public coffers).

<sup>56</sup> Fan et al., *Government Spending*, *supra* note 42, at 1040; see also Wolz, *supra* note 11, at iii (discussing consumption patterns of small farmers as significant to rural economies).

<sup>57</sup> Fan et al., *Government Spending*, *supra* note 42, at 1040.

<sup>58</sup> *Id.* IFAD's RURAL POVERTY REPORT 2011 lists four “drivers” that stimulate the nonfarm economy:

First, urbanization, and particularly the growth of small or medium-sized centres and the growing integration of rural and urban economies. Second, the processes of liberalization and globalization, which can create new employment and service opportunities in rural areas. Third, improved communication and information systems, particularly the diffusion of mobile phone coverage in rural areas. Finally, increasing investment in decentralized and renewable-based energy systems. These drivers may be present and combine differently within and across countries, creating different opportunities for the development of the rural non-farm economy.

RURAL POVERTY REPORT 2011, *supra* note 33, at 21.

<sup>59</sup> Cassen & McNay, *supra* note 34, at 183 (noting that government action, particularly through Green Revolution, has greatly assisted in reduction of rural poverty).

<sup>60</sup> *Id.*

about half as fast as the latter.<sup>61</sup> Agriculture accounts for 52% of India's labor force, but only 18% of the nation's GDP.<sup>62</sup>

The robustness of the agriculture sector has implications for poverty reduction across India<sup>63</sup> because the well-being of both rural and urban populations is typically linked to the annual harvest.<sup>64</sup> Small landowners, farmers, and other agricultural laborers all depend on the annual harvest for employment and income.<sup>65</sup> Yet food security is determined less by scarcity or plenty than by the "institutions that determine how available food is distributed."<sup>66</sup>

A Report of the Global Donor Platform for Rural Development ("GDPRD") on *The Role of Agriculture and Rural Development in Achieving the Millennium Development Goals*,<sup>67</sup> notes that the vast

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<sup>61</sup> Shankar Acharya et al., *The Economy — Past and Future*, in TWENTY-FIRST CENTURY INDIA, *supra* note 4, at 202, 207-08 (showing growth rate for agriculture and allied services of 3.2%, while India's aggregate GDP grew at rate of 6.7% per annum). Only one in five agricultural households in India now earns all of its income from agriculture. RURAL POVERTY REPORT 2011, *supra* note 33, at 54.

<sup>62</sup> *World Factbook: India*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html> (last visited Apr. 24, 2010) (providing no date for data). This represents a drop from 60% agricultural labor and 25% of the nation's GDP earlier this decade. Acharya et al., *supra* note 61, at 202, 216.

<sup>63</sup> Datt & Ravallion, *supra* note 34, at 10.

<sup>64</sup> Cassen & McNay, *supra* note 34, at 182. Harvest size is both "a major factor in employment and earnings for small landholders and agricultural labourers," and it also influences off-farm employment in rural areas. *Id.* Because most who live in poverty are net purchasers of grain — including rural residents — even the urban poor are impacted by the price of food grains, which are influenced by the harvest. *Id.*; see also Heather Timmons & Hari Kumar, *Protests over Fuel Costs Idle Much of India*, N.Y. TIMES, July 6, 2010, <http://www.nytimes.com/2010/07/06/world/asia/06india.html?scp=3&sq=india%20fuel&st=cse> (noting that inflation is driving up food prices, while the salaries of middle and low income Indians are not keeping pace). During past famines, India has controlled prices for urban dwellers but not rural dwellers. SEN, DEVELOPMENT AS FREEDOM, *supra* note 2, 330 nn.10-11 (stating that rural people often suffer more during famines than do "the economically and politically more powerful urban population"). *But see* AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 1-2 (1981).

<sup>65</sup> Cassen & McNay, *supra* note 34, at 182.

<sup>66</sup> See Carmen G. Gonzalez, *Trade Liberalization, Food Security, and the Environment: The Neoliberal Threat to Sustainable Rural Development*, 14 TRANSNAT'L L. & CONTEMP. PROBS. 419, 422 (2004) (discussing Sen's assertion that hunger is function of poverty, not food scarcity); *id.* at 428-29 (discussing food security as function of ability to command food using legal means, meaning that food security is less determined by scarcity or plenty than by "institutions that determine how available food is distributed").

<sup>67</sup> See generally Wolz, *supra* note 11, at 3 (noting that first Millennium Development Goal to eradicate poverty and hunger is foundational and necessary to achieve subsequent goals. Wolz argues that addressing rural poverty through



majority of the world's poor live in rural areas and depend heavily on agricultural incomes, making agricultural livelihoods a significant sector for intervention.<sup>68</sup> Yet the path such growth should take is contested. While some push for the development of large industrial farms as a solution to rural poverty, others argue that smaller farms represent the preferable path for the agricultural sector. Drawing from lessons from the Green Revolution,<sup>69</sup> of which India is often held out as a model,<sup>70</sup> the GDPRD Report advocates agricultural development, among other types of region-specific intervention, to help alleviate rural poverty.<sup>71</sup> Agricultural growth in the small farm sector can also generate employment opportunities, which are good for the poor and achieve favorable distribution between rural and urban sectors.<sup>72</sup> While modern farming methods often increase output, they also tend to diminish the need for agricultural labor, thus ultimately driving migration to the city.<sup>73</sup> They may also lead to soil degradation and other environmental problems.<sup>74</sup> For those countries in early stages of development, the Report suggests that small farms often achieve higher economic efficiency and higher land productivity using less

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development of rural infrastructure will likely serve as essential part of solution to both rural and urban poverty in long-run).

<sup>68</sup> See *id.* at 5; see also RURAL POVERTY REPORT 2011, *supra* note 33, at 178-79 (discussing "sustainable agricultural intensification" and the need to produce sufficient food for the world's growing population while also preserving and restoring the natural resources base).

<sup>69</sup> The Green Revolution of the late 1970s and early 1980s was a time when scholars, economists, and politicians began to redirect their focus toward improving the agricultural sector. Agricultural production increased during this time period, causing reduced food prices and creating jobs. Both rural and urban poor, who often spend income on food staples, enjoyed the benefits of the increased production. See *id.* at 7.

<sup>70</sup> See *id.* at 9 (using India as example of country that has successfully used agricultural development to alleviate poverty); see also Yardley, *supra* note 31 (noting impact of Green Revolution on food production in India).

<sup>71</sup> See Wolz, *supra* note 11, at 9 (highlighting six factors that influence poverty reduction associated with high agricultural growth rates: (i) agriculture must be important to income of the poor; (ii) land distribution is more equitable; (iii) poor consume local/domestic nonfarm products; (iv) poor consume nontradable food staples; (v) low cost technological innovations are available; (vi) certain minimum of rural population density).

<sup>72</sup> *Id.* at ii.

<sup>73</sup> MUKUNDAN, *supra* note 37, at 11-13 (noting some benefits to not using modern farm machinery).

<sup>74</sup> See RURAL POVERTY REPORT 2011, *supra* note 33, at 166 (providing the example of government-subsidized fertilizer, urea, which has resulted in serious soil degradation over three decades of the Green Revolution, even as the government continues to subsidize this fertilizer and not other types which would provide balance and help restore the soil).

capital than larger farms. Compared to large farms, small farms have higher land capital productivities and lower labor productivities,<sup>75</sup> which is beneficial in a country like India, which has a labor surplus.<sup>76</sup> A “vibrant small farm sector” also deters rapid rural-to-urban migration.<sup>77</sup> Because India already experienced a degree of agricultural development during the Green Revolution,<sup>78</sup> however, the advantages of small farm development may now be diminished.<sup>79</sup>

In any event, various Indian laws impede the growth of large-scale, intensive production agriculture. Traditional inheritance laws entitle all children to equal shares in their parents’ property,<sup>80</sup> resulting in fragmentation of property ownership that makes it difficult for farmers to use modern farm equipment because they cannot achieve the requisite economy of scale.<sup>81</sup> The fragmentation of land holdings challenges major investors, which seek to develop quickly and on a large scale.<sup>82</sup>

Despite the significance of the agricultural sector to rural India, some studies suggest that the Indian government should concentrate its poverty alleviation initiatives in other vehicles for long-term growth.<sup>83</sup> Strategic investment in non-agricultural job development in

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<sup>75</sup> Wolz, *supra* note 11, at iii (noting that small farms play important role in rural poverty reduction and in mitigating rural-to-urban migrations because they are associated with “higher land productivity, lower capital intensities, and expenditure patterns that promote growth”).

<sup>76</sup> See MUKUNDAN, *supra* note 37, at 11-13.

<sup>77</sup> Wolz, *supra* note 11, at iii.

<sup>78</sup> Cassen & McNay, *supra* note 34, at 183 (highlighting strong link between poverty reduction and increased expenditure on rural infrastructure as result of government-launched Green Revolution).

<sup>79</sup> Wolz, *supra* note 11, at 9 (noting that diminution of benefits associated with small farms occurs as countries develop and labor becomes more scarce relative to land and capital).

<sup>80</sup> MUKUNDAN, *supra* note 37, at 10.

<sup>81</sup> *Id.* at 11; see also RURAL POVERTY REPORT 2011, *supra* note 33, at 89 (reporting that India’s “average landholding size fell from 2.6 hectares in 1960 to 1.4 hectares in 2000”).

<sup>82</sup> Wal-Mart’s current efforts to gain a foothold in India are illustrative: it started small by purchasing produce from local farmers while investing in low-tech agricultural innovation with and for them. Restrictions on the retail industry, inefficient transportation, and suspicion of Wal-Mart’s large-scale aspirations also impede growth. See Vikas Bajaj, *In India, Wal-Mart Goes to the Farm*, N.Y. TIMES, Apr. 12, 2010, <http://www.nytimes.com/2010/04/13/business/global/13walmart.html?pagewanted=1&hp&adxnlnx=1272175211-8QvIwDiX9%20ec5W0h4NTnCc> (noting that Wal-Mart currently employs 800 people in India, though it hopes that number will grow to 5000 in next three years).

<sup>83</sup> MUKUNDAN, *supra* note 37, at 34; see also Wolz, *supra* note 11, at 13; India,

rural areas is another key to rural poverty alleviation, and it responds to concerns about the contraction of agricultural employment. To maximize the benefit to the rural poor, aid initiatives must target rural communities based on assessment of educational levels and professional skills. Fostering industries like carpentry, food processing, and artisan trades can both assist with rural development and alleviate some strain on agricultural employment.<sup>84</sup> Development of these smaller sectors, however, is complicated by issues like illiteracy, irregular supplies of raw materials, and access to start-up credit and capital.<sup>85</sup>

Poverty responds less to economic growth in some states than in others.<sup>86</sup> Among the factors that impede the poor's ability to benefit from economic growth are inequality of land distribution, low levels of education and literacy, and uneven development between rural and urban areas.<sup>87</sup> States with higher literacy rates, for example, are likely to feature more and better opportunities for nonagricultural economic growth.<sup>88</sup> Antecedent inequalities in rural places thus limit the capacity for industrialization and growth of service sectors to alleviate rural poverty.<sup>89</sup>

Other "productivity-enhancing" investments, including rural infrastructure (e.g., roads and electricity) and other forms of rural development that directly target the rural poor,<sup>90</sup> contribute to poverty

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Committee on the Elimination of All Forms of Discrimination Against Women, *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined Second and Third Periodic Reports*, ¶ 292-96, U.N. Doc. CEDAW/C/IND/2-3 (Oct. 19, 2005) [hereinafter *CEDAW Second and Third*] (detailing self-employment and wage employment programs to assist rural women).

<sup>84</sup> MUKUNDAN, *supra* note 37, at 34.

<sup>85</sup> *Id.* at 35-38; *see also* Wolz, *supra* note 11, at iii.

<sup>86</sup> Datt & Ravallion, *supra* note 34, at 98-99 tbl.2. Kerala had the highest rate of poverty reduction, followed by Punjab and Hayara (3.26% and 2.96% reductions, respectively). The lowest rates of reduction were in Assam (0.06%), Bihar (0.32%), and Madhya Pradesh (0.8%). The authors pay particular attention to the comparison between Kerala and Bihar. The states had two of the highest poverty rates around 1960; by the mid-1990s Kerala's poverty rate was reduced to nearly half of Bihar's. *Id.*

<sup>87</sup> *Id.* at 103-04.

<sup>88</sup> *Id.* at 99.

<sup>89</sup> *Id.* at 98-99, 101 tbl.3; *see also* Lydia Polgreen, *Rural India Gets Chance at Piece of Jobs Boom*, N.Y. TIMES, Nov. 13, 2009, <http://www.nytimes.com/2009/11/13/world/asia/13india.html?scp=4&sq=outsourcing%20rural%20India&st=cse> (noting that most workers at rural outsourcing center are first in their families to finish high school).

<sup>90</sup> Fan et al., *Government Spending*, *supra* note 42, at 1050; *see also* Wolz, *supra* note 11, at iii (noting that increased public investment in rural infrastructure is "essential for promoting growth not only of agriculture, but also of the non-farm

relief. For example, one million rupees (approximately \$22,500) invested in rural roads raises 124 people above the poverty line.<sup>91</sup> Better roads increase both agricultural and nonagricultural opportunities<sup>92</sup> by improving employment opportunities and wages as well as enhancing access to markets and production technology.<sup>93</sup> Designing, constructing, and implementing infrastructure systems also create employment opportunities.<sup>94</sup> The need for investment in such infrastructure — particularly in roads, railways, and electric power — has increased, as public sector investment in them has recently stagnated.<sup>95</sup>

In an implicit recognition of the lack of economic development in rural India, the government of India passed the National Rural Employment Guarantee Act (“NREGA”) in 2005.<sup>96</sup> This law guarantees 100 days of minimum-wage employment in public works to every rural household seeking it.<sup>97</sup> Though the Act’s goal of enhancing overall economic growth by boosting the rural economy is laudable, India’s declining tax-to-GDP ratio has led to questions about the affordability and wisdom of NREGA.<sup>98</sup> The Act’s implementation

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economy and of rural towns”).

<sup>91</sup> Fan et al., *Government Spending*, *supra* note 42, at 1048; *see also* RURAL POVERTY REPORT 2011, *supra* note 33, at 189 (“[R]apid rural non-farm growth is occurring along transport corridors linked to major urban centres. . . .”); Wolz, *supra* note 11, at 24 (recognizing importance of farm-to-market roads to rural development, even though “prestige” infrastructure projects usually attract more support).

<sup>92</sup> Fan et al., *Government Spending*, *supra* note 42, at 1048 (reporting that increase in investment in roads by Rs 100 billion (at 1993 constant prices) would reduce poverty by 0.65%; for each one million Rs invested in agricultural research and development, eighty-five persons are raised above poverty line).

<sup>93</sup> *See also* Bajaj, *supra* note 82, at B1.

<sup>94</sup> Fan et al., *Government Spending*, *supra* note 42, at 1048. Investments in education, soil and water conservation, health and power had less impact in terms of poverty reduction, in that order. *Id.* at 1050 (reporting that, for each 1 million rupees invested in education, forty people would be raised above poverty line, due mainly to increased non-agricultural job opportunities and higher wages; same amount invested in soil and water conservation would raise about twenty people over poverty line; for health spending, about eighteen people; expenditures on power have negligible impact, primarily because of heavy prior investments in electrification); *see also* Guanghua Wan & Zhangyue Zhou, *Income Inequality in Rural China: Regression-Based Decomposition Using Household Data*, in SPATIAL DISPARITIES, *supra* note 54, at 121, 129 (noting that while impact of education on spatial inequality in China is small, it is likely to grow as rural economy becomes more diversified and “demands more skill”).

<sup>95</sup> Acharya et al., *supra* note 61, at 202, 213-14.

<sup>96</sup> Raj Samand, *Rural Job Guarantees: Faring Well*, THE ECONOMIST, Nov. 5, 2009, <http://www.economist.com/node/14816641> (noting that act was expanded to every rural district in April 2008).

<sup>97</sup> *Id.*

<sup>98</sup> *See* Disa Sjoblom & John Farrington, *The Indian National Rural Employment*

has also been criticized. Almost 45 million households received jobs under the Act, but only about 14.5% of these households received the 100 days of employment, according to the Ministry of Rural Development.<sup>99</sup>

Because of the relative lack of investment in rural livelihoods, India's rural residents experience deficits in many sectors. In the following sections, I discuss in detail spatial inequality across the rural-urban axis with respect to clean water and sanitation, health care, and education. In these sections, I also discuss briefly the Indian Constitution's mandate regarding rights that are implicated by the nation's uneven development and these foundational capabilities.

### C. *Life and Bodily Health*

I came to Dhanbad after my father's death. He had been ill for some time, but there is no hospital in Laxmangarh, although there are three different foundation stones for a hospital laid by three different politicians before three different elections. When he began spitting blood that morning, Kishan and I took him by boat across the river. We kept washing his mouth with water from the river, but the water was so polluted that it made him spit more blood.

There was a rickshaw-puller on the other side of the river who recognized my father; he took the three of us for free to the government hospital.

There were three black goats sitting on the steps to the large, faded white building; the stench of goat feces wafted out from the open door. The glass in most of the windows was broken; a cat was staring out at us from one cracked window.

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. . . There was no doctor in the hospital. The ward boy, after we bribed him ten rupees, said that a doctor might come in the evening. The doors to the hospital's rooms were wide open; the beds had metal springs sticking out of them, and the cat began snarling at us the moment we stepped into the room.

ARAVIND ADIGA, *THE WHITE TIGER*<sup>100</sup>

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*Guarantee Act: Will It Reduce Poverty and Boost the Economy?*, ODI PROJECT BRIEFING, 1, 2 (Jan. 2008), available at <http://www.odi.org.uk/resources/download/440.pdf>.

<sup>99</sup> See *States Fail To Provide 100-day Employment to All Under the NREGA*, HINDU, Aug. 6, 2009, <http://www.hindu.com/holnus/002200908061631.htm>.

<sup>100</sup> ADIGA, *supra* note 1, at 39-40. Adiga goes on to explain why there was no doctor

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Strong connections exist between bodily health and access to basic provisions and services such as clean water, advanced sanitation, and health care. The lack of these basic amenities often leads to illness or premature death. Statistics indicate that nearly 70% of all deaths and 92% of deaths from communicable diseases occur among the poorest 20% of the population.<sup>101</sup> In India, waterborne infections account for roughly 80% of illnesses, leading to an annual loss of 73 million workdays and an annual death rate of 1.5 million.<sup>102</sup> In rural areas, infectious and communicable diseases — most of them preventable — cause the majority of deaths.<sup>103</sup> Indeed, the incidence of all diseases is twice as high in rural areas than in urban ones.<sup>104</sup> A significant factor

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at the hospital.

“Why *isn't* there a doctor here, uncle?” I asked. “This is the only hospital on either side of the river.”

“See, it's like this,” the old Muslim man said. “There's a government medical superintendent who's meant to check that doctors visit village hospitals like this. Now, each time this post falls vacant, the Great Socialist lets all the big doctors know that he's having an open auction for that post. The going rate for this post is about four hundred thousand rupees these days.”

“That much!” I said, my mouth opened wide.

“Why not? There's good money in public service! Now, imagine that I'm a doctor. I beg and borrow the money and give it to the Great Socialist, while touching his feet. He gives me the job. I take an oath to God and the Constitution of India and then I put my boots up on my desk in the state capital.” He raised his feet onto an imaginary table. “Next, I call all the junior government doctors, whom I'm supposed to supervise, into my office. I take out my big government ledger. I shout out, ‘Dr. Ram Pandey.’ ”

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“Now you — Dr. Ram Pandey — will kindly put one-third of your salary in my palm. Good boy. In return, I do *this*.” He made a tick on the imaginary ledger. “You can keep the rest of your government salary and go work in some private hospital for the rest of the week. Forget the village. Because according to this ledger, you've *been* there. . . .”

*Id.* at 41.

Finally, Adiga describes how Balram's father died that day and, afterwards, the “ward boys” made he and his brother “clean up after Father before we could remove the body” and how a goat came in “and sniffed us as we were mopping the blood off the floor.” *Id.* at 42.

The absence of medical professionals from their posts in rural communities is echoed in this 2010 news story. See Polgreen, *Right-to-Know*, *supra* note 31.

<sup>101</sup> Patil et al., *supra* note 43, at 129.

<sup>102</sup> *Id.* at 130.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 132.

in rural illness and death, especially in comparison to urban contexts, is a grossly inadequate public health care system.<sup>105</sup>

### 1. Water and Sanitation Infrastructure

Since its independence, India has made great strides in developing its water supply infrastructure.<sup>106</sup> Rapid improvement of drainage and irrigation systems has been one of its major successes.<sup>107</sup> Despite these improvements, however, India still faces many challenges in providing clean water to its burgeoning populace, including those associated with a shrinking supply of groundwater and the advent of urbanization.<sup>108</sup> Because urban centers are associated with higher demands for water and infrastructure, rural areas — especially those adjacent to urban clusters — often suffer water shortages.<sup>109</sup>

The limited extent and sophistication of water and sanitation infrastructure in rural areas is in stark contrast to that in urban India. Statistics paint a bleak portrait of this aspect of rural underdevelopment. While about half of urban residents have access to water and sanitation systems, only about a fifth of rural residents do.<sup>110</sup> Approximately 5.4 million of India's total 7.2 million "dry latrines" (i.e., communal toilets that do not flush) are located in urban areas.<sup>111</sup> In thirteen of India's twenty-eight states, the vast majority of rural households do not have any latrine,<sup>112</sup> with as few as 3.9% of Orissa's residents and as few as 5.5% of Madhya Pradesh's residents having latrines.<sup>113</sup> Of more than 4000 Indian towns, only about 5% have a

<sup>105</sup> *Id.* at 131; see also *infra* notes 130-76 and accompanying text.

<sup>106</sup> PLANNING COMM'N, GOV'T OF INDIA, WATER SUPPLY & SANITATION 15-16 (2002), available at <http://planningcommission.nic.in/reports/genrep/wtrsani.pdf>.

<sup>107</sup> *Id.* at 15.

<sup>108</sup> *Id.* at 15.

<sup>109</sup> *Id.* at 16.

<sup>110</sup> K.J. Nath, *Home Hygiene and Environmental Sanitation: A Country Situation Analysis for India*, 13 INT'L J. ENVTL. HEALTH RES., June 2003, at S19, S21.

<sup>111</sup> *Id.*

<sup>112</sup> Dileep Mavalankar & Manjunath Shankar, *Sanitation and Water Supply: The Forgotten Infrastructure*, in INDIA INFRASTRUCTURE REPORT 2004: ENSURING VALUE FOR MONEY 314, 317 tbl.13.1.5 (2004), available at <http://www.3inetwork.org/reports/IIR-2004/Chap%2013%202003.pdf>. In rural areas, it has "been estimated that 94 percent of houses lack latrines, 97 percent lack separate bathrooms, and 68 percent of the people depend on ordinary well-water. The houses of the poor usually lack minimum amenities like an approach road, drinking water, drainage, electricity and basic cleanliness." Nirmala Murthy et al., *How Well Do India's Social Services Programs Serve the Poor?* 3 (Pol'y Research & External Aff., Working Paper No. 491, 1990).

<sup>113</sup> See Mavalankar & Shankar, *supra* note 112, at 317 tbl.13.1.5.

partially complete sewage system.<sup>114</sup> It comes as little surprise, then, that the most common method of excretion in rural India is open defecation.<sup>115</sup>

Despite the dire need, improvements in water and sanitation have been slow to reach rural areas. Between 1988 and 1998, the percentage of households with no latrine declined from 89.0% to 82.5% in rural areas, while it fell from 31.8% to 25.5% in urban locales.<sup>116</sup> If implementation of improved sanitation in rural areas continues at the current pace, full coverage will not be achieved for some three quarters of a century.<sup>117</sup> One 2004 report contemplates a “future where even the poor have telephones but not toilets or clean water.”<sup>118</sup> The World Bank estimates that poor sanitation and lack of clean water cost India between \$3–8 billion per year, or 1.5% to 3% of the country’s GDP.<sup>119</sup>

Under the Indian Constitution, water and sanitation are principally the responsibility of local governments, called *gram panchayats*.<sup>120</sup> The Seventh Schedule of the Constitution of India indicates that state governments are primarily responsible for water supplies, storage, and sanitation.<sup>121</sup> The 73rd and 74th amendments to the Constitution of India further allocate responsibilities across the rural and urban divide.<sup>122</sup> Rural governments,<sup>123</sup> specifically the intermediate level of

<sup>114</sup> Nath, *supra* note 110, at S21.

<sup>115</sup> *Id.* (defining sanitation as “safe disposal of human excreta” and noting that in urban areas, less than 60% of waste is regularly collected and disposed of).

<sup>116</sup> Mavalankar & Shankar, *supra* note 112, at 317 (citing data from a National Sample Survey).

<sup>117</sup> *Id.* (suggesting 75 to 80 year period).

<sup>118</sup> *Id.* at 318.

<sup>119</sup> Nath, *supra* note 110, at S27-S28.

<sup>120</sup> See INDIA CONST. amend. 73; CEDAW *Second and Third*, *supra* note 83, ¶ 300 (“[I]ndividual water supply schemes are planned, designed, implemented, operated and maintained by the Panchayats/Communities through Village Level Committees.”). India’s central government has earmarked one third of the funds it transfers to panchayats for development schemes related to water sanitation, education, and health. *Id.* at 53; see also Indira Khurana & Romit Sen, WATERAID, DRINKING WATER QUALITY IN RURAL INDIA: ISSUES AND APPROACHES 13-14, available at <http://www.waterawards.in/suggested-reading/wateraid-drinking-water-quality.pdf>.

<sup>121</sup> See INDIA CONST. 7th sched.

<sup>122</sup> See INDIA CONST. amend. 73, 74.

<sup>123</sup> The structure of rural government is often referred to as the “Panchayati Raj” system. MOHANTY, *supra* note 14, at 360. After the passage of the Seventy-Third Amendment of the Constitution of India, each state is required to have a three-tiered Panchayati Raj consisting of: (i) village level government (also referred to as the “Gram Sabha” with a membership including villagers and/or voters in the area); (ii) intermediate level (also frequently referred to as the “Panchayat Samiti” headed by an



local government, are responsible for providing a supply of drinking water.<sup>124</sup> While the central government has no duty to supply water, it must allocate funds, encourage research, and — perhaps most importantly — ensure the implementation of water supply programs.<sup>125</sup>

In line with these obligations, the central government has made efforts to assist in providing adequate water supplies to rural areas. An example of such an effort is the establishment of the Ministry of Rural Development, a branch of the central government responsible for monitoring various aspects of rural development, including drinking water and sanitation.<sup>126</sup> Although this effort is commendable, allocations and expenditures for improved water supply and sanitation remain unimpressive.<sup>127</sup> From 1987 through 2001, the central government allocated 2% of its budget for water supply and sanitation, whereas 17% of the budget was allocated for telecommunication services.<sup>128</sup> One study indicates that the central government allocated less than half of the funds required for sanitation.<sup>129</sup> To make matters worse, the Centrally Sponsored Rural Sanitation Programme spent just 49% of allocated funds in 2000. This data gives little hope for significant short-term improvement in India's rural water and sanitation infrastructure.

## 2. Health Care

As with other measures of development, stark disparities in health care access and resources exist across the rural-urban divide. While the level of the Indian government's expenditure on health care has remained fairly constant over the past five years at about 5% of total expenditures,<sup>130</sup> which is less than 1% of GDP,<sup>131</sup> only about a fifth of

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elected Chair Person); and (iii) district level (also frequently referred to as the "Zila Parishad" with a membership that is directly elected). *Id.* at 360-62.

<sup>124</sup> *Id.* at 361.

<sup>125</sup> See Khurana & Sen, *supra* note 120, at 14.

<sup>126</sup> See generally MINISTRY OF RURAL DEVELOPMENT, <http://rural.nic.in/> (last visited Apr. 3, 2011) (website of Ministry of Rural Development providing information on various departments under its purview).

<sup>127</sup> See Khurana & Sen, *supra* note 120, at 7.

<sup>128</sup> Mavalankar & Shankar, *supra* note 112, at 319 tbl.13.1.7. This comparison may be misleading if the states invested substantially more than the central government in water sanitation and infrastructure.

<sup>129</sup> *Id.* at 321 (quoting D.K. Ghosh, *Sanitation: The Unfinished Agenda*, 46 YOJANA 10, Oct. 2002) (indicating that only 500 crore, or about \$108 million USD, was allocated, while 1200 crore, or about \$ 258 million USD, was needed).

<sup>130</sup> MINISTRY OF FIN., GOV'T OF INDIA, UNION BUDGET AND ECONOMIC SURVEY 2009–

health subsidies go to rural India.<sup>132</sup> Three-quarters of India's health infrastructure, medical manpower, and other health resources are concentrated in urban areas, despite the fact that only one-third of the populace live there.<sup>133</sup> Only about 40% of India's doctors, hospitals, and dispensaries are in rural areas.<sup>134</sup> While India's urban middle class have access to state-of-the-art health services, about 135 million rural residents lack access to even rudimentary health facilities.<sup>135</sup>

Healthcare in India is administered through a three-tiered system comprised of Community Health Centres ("CHCs"), Primary Health Centres ("PHCs"), and Sub-Centres ("SCs").<sup>136</sup> Tertiary medical care is provided through multispecialty hospitals and medical colleges,<sup>137</sup> which are concentrated almost exclusively in urban areas.<sup>138</sup> Because

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10, CHAPTER 11: HUMAN DEVELOPMENT, POVERTY AND PUBLIC PROGRAMMES 273, tbl.11.4 (2010), available at <http://indiabudget.nic.in/es2009-10/chapt2010/chapter11.pdf> [hereinafter UNION BUDGET AND ECONOMIC SURVEY 2009–10] (noting that figure includes both national and state expenditures on health care). The percentage of total government expenditures on health care each year was 4.7% in 2005–06; 4.7% in 2006–07; 4.7% in 2007–08; 4.6% in 2008–09; and 4.8% in 2009–10. *Id.*

<sup>131</sup> Patil et al., *supra* note 43, at 134.

<sup>132</sup> Fan et al., *Rural and Urban Dynamics*, *supra* note 48, at 14-15; see also Patil et al., *supra* note 43, at 134, 133 tbl.4 ("While 75% of India's population lives in rural areas, [based on 1980–1985 five-years plan] less than 10% of the total health budget is allocated to this sector.")

<sup>133</sup> Patil et al., *supra* note 43, at 129; see also *id.* at 132 tbl.2.

<sup>134</sup> *Id.* at 132 tbl.2 (using 1993 and 1994 data and reporting a total of 1.1 million doctors, 13,692 hospitals and 27,403 dispensaries). Of the nearly 700,000 beds, only 20% are located in rural areas. *Id.* The authors note that a consequence of this uneven distribution of medical resources is that "unqualified people (quacks) have set up medical practice in rural areas" and rural residents "exert[ ] pressure on urban facilities." *Id.* at 134. The authors further note that while some of the nation's "medical needs, especially in rural areas, have been attended to by the indigenous health systems such as Ayurveda, homeopathy, *unani*, naturopathy and folk medicine," policy makers and planners have neglected this issue. *Id.* at 131.

<sup>135</sup> *Id.* at 132-33; Ranjit Devraj, *Hunger Haunts Hospitals*, INTER PRESS SERV. NEWS AGENCY, Jan. 3, 2010, <http://ipsnews.net/news.asp?idnews=49877> (reporting that in-patients often must bring their own attendants to retrieve medication and meals, complete paperwork, and assist facility's nurses). A variety of institutions run by corporate, private, voluntary, and public sector organizations serve urban populations, but private medical facilities are rare in rural areas. Even where they exist, these facilities suffer from shortages of resources and personnel. *Id.*

<sup>136</sup> See CEDAW *Second and Third*, *supra* note 83, ¶ 245; GOV'T OF INDIA, DEPT. OF HEALTH & FAMILY WELFARE, ANNUAL REPORT 2009–10, at 1 (2010) [hereinafter *Annual Report 2009–10*], available at <http://mohfw.nic.in/Health%20English%20Report.pdf>.

<sup>137</sup> ANNUAL REPORT 2009–10, *supra* note 136, at 1.

<sup>138</sup> *Id.*

80% of medical specialists in India live in urban centers, rural Indians have virtually no access to specialist care.<sup>139</sup>

As of May 2007, the 145,000 Sub-Centres spread across India<sup>140</sup> were most rural residents' first contact point with the health care system.<sup>141</sup> Each SC is designed to provide only essential health needs, and each is equipped with basic drugs for minor ailments.<sup>142</sup> PHCs are designed to "provide an integrated curative health care to the rural population with emphasis on preventative and primitive aspects of health care."<sup>143</sup> Each CHC, the largest and most specialized health care facility in a rural area, serves as a referral center for four PHCs.<sup>144</sup>

In spite of this seemingly comprehensive health care delivery infrastructure, major problems remain. One government report recorded major deficiencies in implementation of health care services.<sup>145</sup> Beyond the shortage of service providers, PHCs and CHCs in nine of the monitored states lacked full stocks of essential drugs, vaccines, and contraceptives.<sup>146</sup> Further, twenty-four states had not prepared required district-level annual plans, and many centers were not spending the funds allocated and disbursed for specific services.<sup>147</sup> Finally, despite the large number of SCs, PHCs, and CHCs already in place, the system still lacks significant numbers of all three types of institutions relative to need.<sup>148</sup> India's burgeoning population — an

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<sup>139</sup> *Lacking Healthcare, A Million Indians Die Every Year: Oxford University*, ECONOMIC TIMES (Mumbai), Feb. 2, 2009, [http://economictimes.indiatimes.com/Healthcare/Lacking\\_healthcare\\_a\\_million\\_Indians\\_die\\_every\\_year\\_Oxford\\_University/articleshow/4066183.cms](http://economictimes.indiatimes.com/Healthcare/Lacking_healthcare_a_million_Indians_die_every_year_Oxford_University/articleshow/4066183.cms).

<sup>140</sup> GOV'T OF INDIA, DEPT. OF HEALTH & FAMILY WELFARE, RURAL HEALTH CARE SYSTEM IN INDIA, 9 graph 1A (Mar. 2008), available at <http://mohfw.nic.in/Bulletin%20on%20RHS%20-%20March,%202008%20-%20PDF%20Version/Rural%20Health%20Care%20System%20in%20India.pdf>.

<sup>141</sup> *Id.* at 1.

<sup>142</sup> *Id.* One Auxiliary Nurse Midwife and one Male Health Worker staff each SC.

<sup>143</sup> *Id.* For every 6 SCs, 1 PHC exists, 22,370 in all. *See id.* While the goal is to staff each PHC with a Medical Officer and fourteen paramedical and support staff, staff vacancies are common. *See id.* at 1, 12 (reporting that as of March 2007, 5.6% of PHCs had no doctor, 40.0% had no lab technician, and 17.0% had no pharmacist).

<sup>144</sup> *Id.* at 2. While each CHC is designed to be staffed by a surgeon, physician, gynecologist, pediatrician, and twenty-one paramedical and other support staff, as of March 2007, about half of sanctioned positions were vacant. *See id.* at 13.

<sup>145</sup> *Id.* at 2.

<sup>146</sup> *Id.*

<sup>147</sup> UNION BUDGET AND ECONOMIC SURVEY 2009–10, *supra* note 130, at 286.

<sup>148</sup> *Id.* (reporting shortages of 20,486 SCs, 4477 PHCs, and 2337 CHCs based on number of facilities needed to serve the 2001 population).

increase by 130 million since the shortage was calculated — continues to exacerbate the shortage.<sup>149</sup>

In 2005, the central government launched the National Rural Health Mission (“NRHM”) to “provide accessible, affordable and accountable quality health services to rural areas with emphasis on poor persons and remote areas.”<sup>150</sup> The NRHM aims to better serve rural populations, especially women, children, and the poor, by improving their access to and the availability of quality health care.<sup>151</sup> Its overall goal is to double or triple public expenditure from the current level of about 1% of GDP.<sup>152</sup> Such increased investment would likely improve substantially the public health care system, but the extent to which it would target rural populations is unclear.

Despite some progress as measured by health indicators such as infant mortality rate<sup>153</sup> and life expectancy,<sup>154</sup> the central government

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<sup>149</sup> *Population of India — 2001*, GOV'T OF INDIA, <http://indiabudget.nic.in/es2001-02/chapt2002/tab91.pdf> (last visited Apr. 24, 2010); *World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html> (last visited Apr. 24, 2010) (providing population estimate as of July 2009).

<sup>150</sup> UNION BUDGET AND ECONOMIC SURVEY 2009–10, *supra* note 130, at 285. NHRM is being implemented throughout the country, with special attention to eighteen states: Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Uttar Pradesh, Uttarakhand, Orissa, Rajasthan, Himachal Pradesh, Jammu & Kashmir, and the eight northeastern states (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura). *Id.* All eighteen of these states have weak public health indicators and/or weak health care infrastructure. *CEDAW Second and Third*, *supra* note 83, ¶ 248.

<sup>151</sup> GOV'T OF INDIA, DEPT. OF HEALTH & FAMILY WELFARE, NAT'L RURAL HEALTH MISSION, MISSION DOCUMENT 2005–2012, at 2, available at [http://www.mohfw.nic.in/NRHM/Documents/Mission\\_Document.pdf](http://www.mohfw.nic.in/NRHM/Documents/Mission_Document.pdf).

<sup>152</sup> ANNUAL REPORT 2009–10, *supra* note 136, at 19 (reporting current expenditure level at 0.9% of GDP). The Indian Government has also instituted Integrated Child Development Services (“ICDS”) to meet the needs of children under the age of six, as well as expectant and nursing mothers. Almost 650,000 ICDS workers provide services such as supplementary nutrition for twenty-one days. ICDS has served nearly 35 million children and nearly 7.5 million pregnant and nursing mothers. *CEDAW Second and Third*, *supra* note 83, ¶ 249.

<sup>153</sup> The infant mortality rate, or probability of death between birth and age one (per 1000 live births), decreased in India from 83 in 1990, to 67 in 2000, to 54 in 2007. *World Health Statistics 2009*, WORLD HEALTH ORG., 38-39 (2009), available at [www.who.int/whosis/whostat/EN\\_WHS09\\_Full.pdf](http://www.who.int/whosis/whostat/EN_WHS09_Full.pdf). The Indian government's major areas of healthcare focus include nutritional issues, communicable diseases, and the unmet need for contraception and reproductive education. *Health & Family Welfare Sector General Overview*, GOV'T OF INDIA, [http://india.gov.in/sectors/health\\_family/health\\_overview.php](http://india.gov.in/sectors/health_family/health_overview.php) (last visited Apr. 19, 2010).

<sup>154</sup> Life expectancy for males in India has increased from 57 in 1990, to 60 in 2000, to 63 in 2007. Female life expectancy increased from 57 to 62 to 65 over the same period. *World Health Statistics 2009*, *supra* note 153, at 38.

acknowledges uneven progress across regions.<sup>155</sup> Dr. Ashok Vikhe Patil, President of the International Association of Agricultural Medicine and Rural Health, has also criticized the government's focus on programs like family planning, child survival, and safe motherhood, accusing the government of treating them as "statistical targets [rather] than as health services."<sup>156</sup> He is especially critical of India's approach to providing health care to rural residents, noting that "new doctors are incapable of and not inclined to meet the needs of the majority of the public."<sup>157</sup>

Ironically, in light of the poor state of health care in India, its citizens' right to health care is constitutionally protected. The Indian Constitution explicitly recognizes the "right to life" as a fundamental and enforceable right,<sup>158</sup> a right that the central government cannot take away or abridge.<sup>159</sup> The Supreme Court of India has construed the right to life to include the right to access health care. In *P.B. Khet Mazdoor Samity v. State of West Bengal*, the court held that "Article 21 (the Right to Life) imposes an obligation of the state to safeguard the right to life of every person."<sup>160</sup> Various government hospitals denied medical assistance to the plaintiff, who suffered severe injuries after

<sup>155</sup> UNION BUDGET AND ECONOMIC SURVEY 2009–10, *supra* note 130, at 284.

<sup>156</sup> Patil et al., *supra* note 43, at 134; *see also* CEDAW *Second and Third*, *supra* note 83, ¶ 63 ("The National Health Policy, 2002 addresses the issues related to population stabilization and universal access to quality contraceptive services as a step towards attaining the two-child norm.").

<sup>157</sup> Patil et al., *supra* note 43, at 132.

<sup>158</sup> INDIA CONST. art. 21, pt. III. The Constitution of India contains a list of "Fundamental Rights" of citizens, which are enforceable by the supreme court. All laws that do not comply with the Fundamental Rights set forth in the Constitution are considered void. INDIA CONST. art. 13(1).

<sup>159</sup> INDIA CONST. art. 13(2). The Constitution of India guarantees citizens the right to petition the supreme court to enforce a citizen's Fundamental Rights. INDIA CONST. art. 14. Several scholars use the term "justiciable" to refer to the enforceability of Fundamental Rights. Article 32 of the Indian Constitution guarantees the justiciability of fundamental rights. Under Article 32, individuals have the right to move the supreme court for the enforcement of their fundamental rights, the supreme court has the power "to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto*, and *certiorari* . . . for the enforcement of any of the rights conferred by [Part III]." INDIA CONST. art. 32. *But see* Cass Sunstein, *Constitutionalism and Secession*, 58 U. CHI. L. REV. 633, 668 (1991) (noting existence of positive rights in India's constitution, but concluding that such rights are not enforceable).

<sup>160</sup> *Paschim Banga Khet Mazdoor Samity & Ors. v. State of West Bengal & Anor.*, A.I.R. 1996 S.C. 2426 (India). Indeed, the Indian Supreme Court has construed Article 21 as the basis for "privacy jurisprudence in cases involving marital rape and restitution of conjugal rights." NUSSBAUM, *WOMEN AND HUMAN CAPABILITIES*, *supra* note 22, at 168 n.3.

falling off a train; he eventually paid Rs 17,000 (approximately \$366 USD) for treatment at a private hospital.<sup>161</sup> The court awarded the victim Rs 25,000 (approximately \$538 USD) in compensation and issued directions to the state of West Bengal to upgrade its health facilities.<sup>162</sup> The supreme court has upheld and enforced the Right to Life in several subsequent cases, including one decided in 2010.<sup>163</sup>

A significant cause of deficits in India's health care infrastructure is the means of funding, which also has legal implications. Monica Das Gupta, a Senior Social Scientist in the Development and Research Group of the World Bank, notes that despite the importance of public health infrastructure to the country's development,<sup>164</sup> the current funding structure deprives public health of essential funds. The constitution delegates to the state governments responsibility for providing most public health services, while requiring them to remit a high percentage of their tax revenues to the national government.<sup>165</sup> The constitution thus leaves states with an essentially unfunded mandate. Further, the central government regularly requires states to co-fund new programs, which states are often unable to do.<sup>166</sup>

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<sup>161</sup> *Paschim Banga Khet Mazdoor Samity*, A.I.R. 1996 S.C. 2426.

<sup>162</sup> *See id.*; *see also* SOUTH ASIAN HUMAN RIGHTS DOCUMENTATION CENTRE, HUMAN RIGHTS AND HUMANITARIAN LAW, DEVELOPMENTS IN INDIAN AND INTERNATIONAL LAW 257 (2008).

<sup>163</sup> *See* Laxmi Mandal v. Deen Dayal Harinagar Hosp. & Ors., W.P.(C) Nos. 8853/2008 (Delhi H.C., 2010) (awarding monetary compensation to family of deceased victim, who claimed that her right to life was violated due to delivery of poor healthcare); *see also* Mahendra Pratap Singh v. State of Orisa, 1997 A.I.R. 37 (Ori.) (India) (holding that Indian government's failure to open health care facility in village was violation of right to life); Jaitun v. Maternity Home, MCD, Jangpura & Ors., W.P. (C) 10700/2009 (Delhi H.C.) (awarding petitioner monetary compensation after she was forced to give birth under tree due to inadequate health facilities); Tabassum Sultana & Ors. v. State of Uttar Pradesh, 1997 A.C.J. 1343 (1997) (mandating that state of Uttar Pradesh pay 3 lakh rupees (approximately \$6,442 USD) to woman who was accidentally given tubectomy when she had gone to hospital for simple checkup); Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India) (holding that Article 21 protects not only against executive action, but also against legislation that deprives persons of life or personal liberty without procedure that is fair, just, and reasonable). *See generally* MANOJ KUMAR SINHA, ENFORCEMENT OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: INTERNATIONAL AND NATIONAL PERSPECTIVES 168 (2006); Jerome Amir Singh et al., *Do Human Rights Matter to Health?*, 370 THE LANCET 5, 21 (2007) (discussing Indian law regarding right to life and its impact on healthcare).

<sup>164</sup> Programs like environmental sanitation and other core public health concerns are cited as among programs that are often overlooked and underfunded. Monica Das Gupta, *Public Health in India: An Overview 1* (World Bank Policy Research, Working Paper No. 3787, 2005).

<sup>165</sup> *Id.* at 5.

<sup>166</sup> *Id.*

Moreover, the legislative framework for public health service provision as manifested in Public Health Acts has not been revised since the colonial era. For example, the central government passed the Model Public Health Act in 1951 and revised it in 1987, but most states have not adopted the Act. Consequently, while some municipal areas still have public health facilities and regulations in place, such infrastructure is rarer in small towns and rural locales.<sup>167</sup> By failing to adopt a unified standard and permitting municipalities to retain their own regulations, less developed areas suffer health care deficits.<sup>168</sup>

Compounding difficulties in gaining access to health care is the fact that just one tenth of Indians have any form of health insurance.<sup>169</sup> Almost 60% of the average citizen's total annual expenditures are on medical care, and 25% of Indian people who are hospitalized become impoverished while attempting to cover their medical expenses.<sup>170</sup> That is, they must borrow heavily or sell assets to cover medical costs, causing many to fall below the poverty line.<sup>171</sup> A study of rural families' health care expenditures found that "70% of families spend 60% of their annual income on health" while 93% of health care expenditures went to "curative and emergency care."<sup>172</sup> Further, because public-sector health services are "ill-equipped and unaccountable,"<sup>173</sup> poor families must often use private services which leave them "spending a higher percentage of their income on health than do the rich."<sup>174</sup>

At the national level, focus is shifting towards creating a "federal" authority, designed similarly to the U.S. Centers for Disease Control.<sup>175</sup> The oversight agency's design, combined with funding sources like the NRHM and the National Sanitation Mission, have the potential to transform the state of public health services in India.<sup>176</sup> All could have profound impacts on India's rural sector.

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<sup>167</sup> *Id.* at 6.

<sup>168</sup> *Id.*

<sup>169</sup> See Ranjit Devraj, *Hunger Haunts Hospitals*, INTER-PRESS SERVICE, Jan. 3, 2010, <http://ipsnews.net/news.asp?idnews=49877>.

<sup>170</sup> *See id.*

<sup>171</sup> *See id.* (reporting that more than 40% of hospitalized Indians borrow heavily or sell assets to cover medical expenses).

<sup>172</sup> Patil et al., *supra* note 43, at 134.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Das Gupta, *supra* note 164, at 9.

<sup>176</sup> *Id.*

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D. Education

If the Indian village is a paradise, then the school is a paradise within a paradise.

There was supposed to be free food at my school — a government program gave every boy three *rotis*, yellow *daal*, and pickles at lunchtime. But we never ever saw *rotis*, or yellow *daal*, or pickles, and everyone knew why: the school teacher had stolen our lunch money.

The teacher had a legitimate excuse to steal the money — he said he hadn't been paid his salary in six months. He was going to undertake a Gandhian protest to retrieve his missing wages — he was going to do nothing in class until his paycheck arrived in the mail. Yet he was terrified of losing his job, because though the pay of any government job in India is poor, the incidental advantages are numerous. Once, a truck came into the school with uniforms that the government had sent for us; we never saw them, but a week later they turned up for sale in the neighboring village.

No one blamed the schoolteacher for doing this. You can't expect a man in a dung heap to smell sweet. Every man in the village knew he would have done the same in his position. Some were even proud of him, for having got away with it so cleanly.

ARAVIND ADIGA, THE WHITE TIGER<sup>177</sup>

While nearly 17% of the world's population lives in India, the nation is home to 40% of the world's illiterate population.<sup>178</sup> A disproportionate share of these illiterate residents lives in rural areas. As with other types of infrastructure and services in India, data

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<sup>177</sup> ADIGA, *supra* note 1, at 28. Earlier on the same page, he describes his school as one “with two-foot-long lizards the color of half-ripe guavas hiding in its cupboards . . . .”

<sup>178</sup> Geeta Kingdon et al., *Education and Literacy*, in TWENTY-FIRST CENTURY INDIA, *supra* note 4, at 130, 130 (providing no date for data). Another source says: 34% of the world's illiterate population live in India. *India Has a Third of World's Illiterates*, TIMES OF INDIA, Nov. 9, 2004, <http://timesofindia.indiatimes.com/india/India-has-a-third-of-worlds-illiterates/articleshow/916814.cms>. While the overall literacy rate in 2001 was just 64.5%, this represented an increase from 52% a decade earlier. *India Economic Survey 2009–10, Table 9.4: State-Wise Literacy Rates*, GOV'T OF INDIA, MINISTRY OF FIN., <http://indiabudget.nic.in/es2009-10/chapt2010/tab94.pdf>. In 1951, when India gained independence, only 9% of the female and 27% of the male population were literate. Kingdon et al., *supra*, at 131.



indicate significant disparities in educational investment, resources, and achievement across the rural-urban axis.<sup>179</sup>

India's booming economy has spurred new and increased investment in education as the nation attempts to meet the human capital needs associated with its rapid development.<sup>180</sup> The Indian government increased expenditures on education from 0.64% of GDP in 1951, to 4.1% in 2001.<sup>181</sup> Sharp increases in enrollment of both girls and rural children led to a rise in overall primary school enrollment during the 1990s.<sup>182</sup> More recently, the projected enrollment rate in primary schools in 2004 was 84.18%, down from a reported 95.7% in 2001.<sup>183</sup> This recent decline reflects a lack of resources to accommodate the increased population. Due to a shortage of resources and lack of political will, the system suffers from high pupil-teacher ratios, poor infrastructure, and inadequate teacher training.<sup>184</sup>

Government schools in rural areas remain particularly poorly funded and understaffed.<sup>185</sup> Inadequate school buildings and uneven distribution of state grant funds often compound the challenges facing rural teachers.<sup>186</sup> Of India's 700,000 rural schools, only one in six has

<sup>179</sup> Data from 1998–99 show that the gap between educational opportunity for rural and urban children increases with the child's age, as does the gender gap. Least likely to be educated are the rural girls, while most likely to be educated are the urban boys. The percentage of children aged 6–14 attending school was higher in urban areas than in rural areas; it was also higher for the 6–10 age group than for those aged 11–14. For those in the younger age group, about 90% of urban females and 92% of urban males were attending school, while only 83% of rural males and 75% of rural females attended. The percentage of urban children aged 11–14 attending school was 85% for males and 83% for females, while only 61% of rural females and 79% of rural males in the same age group were attending. In rural India, 25% of female children aged 6–10 and 38% of female children aged 11–14 were not attending school. The corresponding number for rural males is 17% and 21%, respectively. Vimala Ramachandran et al., *Teacher Motivation in India*, EDUC. RES. UNIT 9 (2005), available at <http://www.dise.in/Downloads/Use%20of%20Dise%20Data/Teacher%20Motivation%20in%20India.pdf> (data for 1998–99).

<sup>180</sup> See Anuradha Raghunathan, *Lesson Plans*, FORBES MAGAZINE, Sept. 29, 2008, available at <http://www.forbes.com/global/2008/0929/047.html>.

<sup>181</sup> Ramachandran et al., *supra* note 179, at 9. According to the Government of India, its investment in education declined between 1998 and 2003. See CEDAW *Second and Third*, *supra* note 83, ¶ 190. It also reports that, in 2005, 6% of the nation's GDP from government and private sources was dedicated to education. See *id.*, ¶ 11.

<sup>182</sup> Ramachandran et al., *supra* note 179, at 9–10.

<sup>183</sup> *Id.* at 9 (reporting Gross Enrollment Rate projected for 2004).

<sup>184</sup> *Id.* at 20, 24–25.

<sup>185</sup> *Id.* at 20, 24; see also Elizabeth Yuan, *For a Girl in Rural India, Education Is a Difficult Pursuit*, CNN INT'L, Mar. 23, 2007, <http://edition.cnn.com/2007/WORLD/asiapcf/03/15/girl.education/index.html>.

<sup>186</sup> R. GOVINDA & Y. JOSEPHINE, INT'L INST. FOR EDUC. PLANNING, PARA TEACHERS IN

functioning toilets.<sup>187</sup> While only 15% of primary schools in India use one-room schools, 95% of them are in rural areas.<sup>188</sup>

In addition to inadequate facilities and overcrowded classrooms, absentee teachers and poor working conditions have driven up rural dropout rates, especially for girls.<sup>189</sup> The percentage of rural children who dropped out or never attended school is higher than for urban children. In rural areas, 26.4% of males and 40.8% of females dropped out of school compared with their urban counterparts, of which 13.2% of males and 17.1% of females dropped out.<sup>190</sup> The contrast between urban and rural in the percentage of children who never attended school is less stark. Whereas 3.3% of rural males never attended, the figure for urban males is 2.3%. A similar rural-urban gap is reflected in the statistics for female students: 3.8% of rural females and 3.0% of urban females never attended school.<sup>191</sup>

Many villages have only primary schools, meaning students must travel to reach secondary schools.<sup>192</sup> If walking is the only means of transport and a rural location makes this distance difficult, continuing one's education may be virtually impossible.<sup>193</sup> Ninety-one percent of urban households live within two kilometers of a school that offers secondary classes, compared to only 47% of rural households.<sup>194</sup>

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INDIA: A REVIEW 21-22 (2004), available at <http://www.unesco.org/iiep/eng/research/basic/PDF/teachers5.pdf>.

<sup>187</sup> *Primary School Years*, UNICEF: INDIA, [http://www.unicef.org/india/children\\_166.htm](http://www.unicef.org/india/children_166.htm) (last visited Apr. 24, 2010); see also Shivani Singh, *Education Cess: Are Govt Schools Any Better Now?*, TIMES OF INDIA, Apr. 7, 2005, <http://timesofindia.indiatimes.com/articleshow/1070939.cms>.

<sup>188</sup> Ramachandran et al., *supra* note 179, at 9.

<sup>189</sup> *Id.*

<sup>190</sup> VIMALA RAMACHANDRAN, INDIA GIRLS EDUCATION COUNTRY STUDY — ANNEXURE 1, at 7 tbl.10 (2005), available at <http://www.eriindia.org/files/EFA%20Case%20Study%20India%20Annexure%2020%20June%202003.pdf> (reporting data for 1997 on children aged five to fourteen years).

<sup>191</sup> *Id.* One government program that aims to educate rural adult women, thereby compensating for the poor formal education system, is the Mahila Samakhya Scheme, which was launched in 1989. Serving more than 13,000 villages in nine states, the scheme is based on a model of educational collectives built on grassroots womens' organizations at the community level. *CEDAW Second and Third*, *supra* note 83, ¶ 65.

<sup>192</sup> Yuan, *supra* note 185.

<sup>193</sup> *Id.*

<sup>194</sup> Press Release, Gov't of India, Nat'l Sample Survey Office, Press Note on Education in India, 2007-08: Participation and Expenditure 3 (May 19, 2010) (available at [http://mospi.gov.in/press\\_note\\_NSS\\_%20Report\\_no\\_532\\_19may10.pdf](http://mospi.gov.in/press_note_NSS_%20Report_no_532_19may10.pdf)); see also *CEDAW Second and Third*, *supra* note 83, ¶ 196 (stating that proportion of children having access to primary school in less than one kilometer distance from their home has increased substantially).

Over the past two decades, the Indian Parliament has responded to these deficits with new and amended laws. Like the right to life, the right to education is embodied in Article 21 of the Indian Constitution. In 1992, the Supreme Court of India formally expanded its interpretation of Article 21 to hold that the “‘right to education’ is concomitant to Fundamental Rights enshrined [in] the Constitution.”<sup>195</sup> The court held that “every citizen has a right to education under the Constitution.”<sup>196</sup> The following year, the supreme court decided *Unnikrishnan v. State of Andhra Pradesh* acknowledging that while the right to education is not expressly a Fundamental Right, “it is implicit in and flows from the right to life guaranteed under Article 21.”<sup>197</sup> The court went on to say that the right to education means: “(a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.”<sup>198</sup>

Following *Unnikrishnan*,<sup>199</sup> the Indian Parliament enacted the 86th constitutional amendment, which made elementary education a fundamental right.<sup>200</sup> Although lauded as a progressive step, the amendment necessitated the drafting of a separate bill to implement this right. After years of controversy, the Indian Parliament passed the Right of Children to Free and Compulsory Education Act in 2009.<sup>201</sup> Under that law, education is now free and guaranteed for children ages six to fourteen.<sup>202</sup> The Indian Constitution further requires the State to provide early childhood care and education for all children up to the age of six.<sup>203</sup>

<sup>195</sup> *Mohini Jain v. State of Karnataka*, (1992) 3 S.C.R. 658 (India).

<sup>196</sup> *Id.*

<sup>197</sup> *J.P. Unnikrishnan v. State of Andhra Pradesh*, A.I.R. 1993 S.C. 2178 (India).

<sup>198</sup> *Id.* at 645.

<sup>199</sup> *Id.* (holding that education is fundamental right of citizens).

<sup>200</sup> Ramachandran et al., *supra* note 179, at 13; see also *CEDAW Second and Third*, *supra* note 83, ¶ 74 (reporting that education became constitutional right in Eighty-sixth Constitutional Amendment in 2002).

<sup>201</sup> Right of Children to Free and Compulsory Education Act, INDIA CODE (2009), available at <http://education.nic.in/Elementary/free%20and%20compulsory.pdf>; see also *Cabinet Clears Long-Pending Education Bill*, HINDU, Nov. 1, 2008, <http://www.hindu.com/thehindu/holnus/000200811010371.htm> (outlining key provisions of Right to Education Bill).

<sup>202</sup> Right of Children to Free and Compulsory Education Act, *supra* note 201.

<sup>203</sup> See *CEDAW Second and Third*, *supra* note 83, ¶ 74.

Under this constitutional scheme, the national government implements broad educational development policies and establishes educational norms and standards, while the states directly control the actual school systems.<sup>204</sup> Eighty percent of Indian elementary schools are government-run or government-supported. The school that any given child attends is dictated largely by the deeply entrenched class system and the family's ability to pay.<sup>205</sup> In urban areas, wealthy and socially elite children are funneled into prestigious private schools or schools funded by the government and managed by state education boards. Schools run by municipalities and other local governments, typically the only type available to rural children, usually educate the poor.<sup>206</sup>

One approach to reducing the cost of education is the use of "parateachers," instructors without the professional qualifications of teachers who therefore earn far less. The use of parateachers emerged in the 1990s, when several states adopted plans to promote primary education.<sup>207</sup> Between 1994 and 1999, about 220,000 parateachers were appointed across 10 states, a number that more than doubled by 2001.<sup>208</sup> States turned to parateachers in response to teacher shortages, absenteeism, and many teachers' unwillingness to work in rural

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<sup>204</sup> GOVINDA & JOSEPHINE, *supra* note 186, at 10.

<sup>205</sup> Marie Lall, *The Challenges for India's Education System 4* (Chatham House Briefing Paper, 2005), available at [http://www.chathamhouse.org.uk/files/3233\\_bpindiaeducation.pdf](http://www.chathamhouse.org.uk/files/3233_bpindiaeducation.pdf). In spite of this, India has reported to the United Nations that its 1986 National Policy on Education placed special emphasis on eradicating disparities. CEDAW *Second and Third*, *supra* note 83, ¶¶ 64, 124.

<sup>206</sup> Lall, *supra* note 205, at 4.

<sup>207</sup> Kingdon et al., *supra* note 178, at 141-42. The increased use of parateachers has drawn mixed reviews. Because parateachers must be appointed in communities where they live, their presence can foster a sense of community, bridging a social and physical gap that often exists between students and teachers. See GOVINDA & JOSEPHINE, *supra* note 186, at 19; Francois LeClercq, *Education Policy Reforms and the Quality of the School System: A Field Study of Primary Schools in Madhya Pradesh, India*, DEVELOPMENT ET INSERTION INTERNATIONALE 17 (Document de Travail No. DT/2003/12, Oct. 2003), available at [www.dial.prd.fr/dial\\_publications/PDF/Doc\\_travail/2003-12.pdf](http://www.dial.prd.fr/dial_publications/PDF/Doc_travail/2003-12.pdf). Lower qualification standards, compensation, and a lack of a peer support structure in remote areas, however, raise concerns regarding the quality of education parateachers provide. *Id.* at 19-20. Taken in a different light, one study suggests that because parateachers are usually employed on shorter contracts than traditional teachers, there is increased pressure to perform, thus leading to greater effectiveness despite their inferior training. Paul Atherton & Geeta Kingdon, *The Relative Effectiveness and Costs of Contract and Regular Teachers in India* 16 (Oxford Univ. Ctr. for the Study of African Econ., Working Paper No. WPS/2010-15, 2010), available at [www.csae.ox.ac.uk/workingpapers/pdfs/2010-15text.pdf](http://www.csae.ox.ac.uk/workingpapers/pdfs/2010-15text.pdf).

In addition, their closeness to the community may increase their accountability to parents regarding student performance. See *id.*

<sup>208</sup> Kingdon et al., *supra* note 178, at 141-42.

areas.<sup>209</sup> Parateachers are used primarily in rural schools, to increase staffing of single-teacher schools.<sup>210</sup>

Having demonstrated that India's uneven development has dramatic consequences in the water, sanitation, health care, and education sectors, the next Part uses the capabilities frame to critique these disparities in services that are so critical to core capabilities. It does so with a view of informing India's development path and priorities, including appropriate attention to the rural-urban axis.

## II. RURAL DEVELOPMENT THROUGH A CAPABILITIES LENS

Amartya Sen and Martha Nussbaum developed the capabilities framework for evaluating human welfare as an alternative to standard social contractarianism theories.<sup>211</sup> Nussbaum and Sen assert that focusing on resources (e.g., GDP, national poverty rates) and/or utility fails to take into account roadblocks to human dignity, including imbalances in power along various axes.<sup>212</sup> The major departure of the capabilities approach from traditional contractarianism is the former's reliance on functional capabilities, such as the ability to live to an old age or engage in meaningful relationships, as the measure of human welfare.<sup>213</sup> Nussbaum maintains that the capabilities approach is as

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<sup>209</sup> GOVINDA & JOSEPHINE, *supra* note 186, at 15.

<sup>210</sup> Kingdon et al., *supra* note 178, at 141 (reporting that parateachers earn one-fifth to one half of what fully qualified teachers earn). For example, parateachers have been recruited for years in Madhya Pradesh, but the state government recently passed legislation requiring both parateachers and state-certified teachers to be classified as simply "teachers" in reporting. Govinda & Josephine, *supra* note 186, at 16. In Gujarat, the Seventh All India Survey of 2004 estimated 43.08% of primary level and 31.79% of upper primary level teachers were parateachers. This compares to 14.31% of parateachers at the primary level and 13.35% at the upper primary level for urban areas in the same state. *Id.* at 17-18. The official position regarding the use of parateachers is that it is appropriate to: (1) expand access to school in underserved communities; (2) eliminate single-teacher schools and multi-grade teaching; and (3) reduce high pupil-teacher ratios. Atherton & Kingdon, *supra* note 207, at 2.

<sup>211</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 3-8 (noting that social contractarian theories were expressed principally in John Rawls's *A Theory of Justice*).

<sup>212</sup> *Id.* at 164-68. Nussbaum cites an example of a person in a wheelchair. No matter what level of resources this person receives, there are still issues of a lack of mobility. Capabilities address this need for a redesign of social spaces that a focus on resources or utility cannot. *Id.* at 167-68. Sen also takes up the issue of variabilities among what he calls "contingent circumstances," which influence the use individuals can make of a given set of commodities. He lists personal heterogeneities, environmental diversities, variations in social climate, differences in relational perspectives, and distribution within the family. SEN, *supra* note 2, at 70-71.

<sup>213</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 165; *see also supra* note 26 (listing capabilities).

successfully universal as the traditional approach, while still acknowledging and protecting the heterogeneous nature of human welfare.<sup>214</sup> Because the capabilities approach compliments human rights and second-wave rights movements, it is a significant source of influence in both the international human rights and development communities, as well as among rights theorists more broadly.<sup>215</sup>

Agency is a hallmark of the capabilities framework, which recognizes each human being “as an agent and an end”<sup>216</sup> and focuses on “what people are able to do and be.”<sup>217</sup> In particular, Nussbaum calls for a “threshold level of each capability”<sup>218</sup> below which citizens are not truly functioning as humans. Nussbaum and Sen distinguish between capabilities and what they label “functionings,” which are the ways in which people act on, or realize the possibilities associated with, their capabilities.<sup>219</sup> Professor Jennifer Prah Ruger similarly explains capabilities as the building blocks or prerequisites of functionings, specifically in relation to the life and bodily health capabilities.<sup>220</sup> “Health capabilities,” she writes, “represent the ability of individuals to achieve certain health-related functionings. The difference between health capabilities and health functionings is the difference between the freedom to achieve and achievement, and there is feedback between the two.”<sup>221</sup> In short, functionings are the fruition of capabilities, and the capabilities framework recognizes that different

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<sup>214</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 179-83.

<sup>215</sup> *Id.* at 284-86; *see also* Sandra Fredman, *Engendering Socio-Economic Rights*, 25 S. AFR. J. HUM. RTS. (2009), available at <http://ssrn.com/abstract=1631765>; Ruger, *Global Health Justice*, *supra* note 29, at 261; Stein & Stein, *supra* note 29, at 1218; *Rural Women in a Changing World: Opportunities and Challenges*, U.N. DIV. FOR THE ADVANCEMENT OF WOMEN, DEPT. OF ECON. & SOC. AFF., 3, 14, 23, 34-36 (2008), available at <http://www.un.org/womenwatch/daw/public/Women%202000%20-%20Rural%20Women%20web%20English.pdf> (using the term “capabilities” in relation to human rights); RURAL POVERTY REPORT 2011, *supra* note 33, at 23 (referring to the need to strengthen both individual and collective capabilities in rural communities). For Nussbaum’s explanation of why capabilities language is preferable to rights language, *see* NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 96-101.

<sup>216</sup> NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 106.

<sup>217</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 70.

<sup>218</sup> NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 6.

<sup>219</sup> *See* Alexander, *supra* note 29, at 764-65 nn.71-74. Sen writes: “A person’s ‘capability’ refers to the alternative combinations of functionings that are feasible for her to achieve.” *Id.* at 764-65 n.72.

<sup>220</sup> Ruger, *Global Health Justice*, *supra* note 29, at 267. She writes “Health needs — for physician care and medication, for instance — map directly to health functionings, which in turn map to health capabilities.” *Id.*

<sup>221</sup> *Id.* at 267.

individuals may utilize their capabilities to achieve different functionings.<sup>222</sup>

A. *Geography's Relevance to Capabilities*

The capabilities approach, especially as Nussbaum expounds upon it in *Frontiers of Justice*, can be deployed as a frame for assessing well-being, or the lack thereof, for any population group or individual.<sup>223</sup> Nussbaum often uses it, for example, to discuss the situation of women.<sup>224</sup> In that context in particular, she attends to space and place, both implicitly and explicitly. Nussbaum's work has been greatly informed by time spent in India, and her writing evinces attention to geography in its use of many place-specific illustrations. She typically notes, for example, the region or particular place from which anecdote or data is drawn, sometimes noting the rural character of a place.<sup>225</sup> In doing so, Nussbaum implies that women and children, in particular, are often worse off in rural places than in urban ones.<sup>226</sup> Nussbaum

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<sup>222</sup> Further, Nussbaum focuses on the distinction between capabilities and functionings using, among other examples, fasting for religious purposes on the one hand and starvation on the other. The first would reflect a capability but not a functioning, while the latter would reflect a lack of capability. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 87. For Nussbaum, what matters is the capability; it need not be coupled with a functioning. NUSSBAUM, FRONTIERS OF JUSTICE, *supra* note 21, at 79 (noting that protecting capabilities rather than specific functionings fosters pluralism).

<sup>223</sup> See generally NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22. In *Frontiers of Justice*, she also discusses extensively the disabled as a group. NUSSBAUM, FRONTIERS OF JUSTICE, *supra* note 21, at 99.

<sup>224</sup> See generally NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22; see also *infra* note 225.

<sup>225</sup> NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 21-22 (describing as relevant to an individual woman's "choices and constraints" whether she is "in the city rather than in a rural area"); *id.* at 27 (comparing one "rural area" of Bihar with particularly low ratio of women to men, 75:100, to Kerala where women outnumber men and rest of Bihar, with a ratio of 90:100); *id.* at 28 (noting the problem of child labor and that "especially rural families depend on labor performed by their children"); *id.* at 29 (discussing NGO in rural Bihar that provides basic education for girls who spend their days herding goats); Martha C. Nussbaum, *Sex, Laws, and Inequality: What India Can Teach the United States*, 131 DAEDALUS, Winter 2002, at 95, 100 [hereinafter *Sex, Laws, and Inequality*] (noting ratio of women to men in "rural Bihar"; noting female literacy rates in "some rural areas"; noting that some regions "utterly lack schools of any kind, just as they frequently lack reliable electricity, medical services, water, and decent roads").

<sup>226</sup> NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 21-22, 27-29; Nussbaum, *Sex, Laws, and Inequality*, *supra* note 225, at 100.

suggests the relevance of the rural-urban axis to well-being and, thus, to capabilities.

In addition, Nussbaum expressly recognizes the rural-urban axis as embodying power differentials. In writing about the failures of traditional contractarianism, she notes that it fails to acknowledge imbalances of power and ability associated with various characteristics, and she enumerates inequalities “between rural and urban populations” as among such characteristics.<sup>227</sup> Indeed, the rural-urban axis is surely one of the most powerful and salient axes of (dis)advantage in nations like India, which are at once both developed and developing. India, along with other so-called BRIC countries,<sup>228</sup> is highly urbanized in parts, but also features vast undeveloped, rural swaths, where huge segments of its population live. It is in such countries where development is so dramatically uneven that inequalities between rural and urban are most stark. As expressed in a study of spatial inequality sanctioned by the United Nations, “the rural-urban divide in developing countries is often associated with other differences linked to the provision of infrastructure, the development of capital markets, education, health care, and so on.”<sup>229</sup> It is thus also in these countries that the challenges of rural development and managing rural-to-urban migration put so much at stake.<sup>230</sup>

Within a capabilities framework, then, geography — rurality in particular — might be thought of as a handicap that profoundly shapes the lives of otherwise “normal” people.<sup>231</sup> That is, if urban residents are taken as a norm in terms of access to government

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<sup>227</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 225 (writing of “inequalities of class, caste, race, religion, ethnicity, and between rural and urban populations” in addition to those associated with gender).

<sup>228</sup> The BRIC reference is to Brazil, Russia, India, and China.

<sup>229</sup> Anthony Shorrocks & Guanghua Wan, *Spatial Decomposition of Inequality* 14 (U.N. Univ. World Inst. for Dev. Econ. Res., Discussion Paper No. 2004/1, 2004), available at [http://www.wider.unu.edu/publications/working-papers/discussion-papers/2004/en\\_GB/dp2004-001/](http://www.wider.unu.edu/publications/working-papers/discussion-papers/2004/en_GB/dp2004-001/). See also RURAL POVERTY REPORT 2011, *supra* note 33, at 10, 14, 19 (focusing on infrastructure and market needs of rural places in developing world).

<sup>230</sup> See, e.g., Kathryn Anderson & Richard Pomfret, *Spatial Inequality and Development in Central Asia*, in *SPATIAL DISPARITIES*, *supra* note 54, at 233, 234 (noting that when barriers to entry into good jobs cause economic inequality, they “can foment internal tension, and economic and social development within countries is negatively affected”).

<sup>231</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 101 (explaining “normal” in relation to disability as people with average flaws and limitations); *id.* at 105 (contrasting “normal” and “normally productive” citizens with “people with a special category of impairment”); see also Pruitt, *Deconstructing CEDAW’s Article 14*, *supra* note 27, at 389 (asserting that urban women are implicit norm in CEDAW).



services and infrastructure, rural residents may be seen as disabled by geography.<sup>232</sup> They are handicapped by rural spatiality.<sup>233</sup>

As Part I illustrates in great detail, rural residents often lag behind their urban counterparts with respect to access to many types of infrastructure and opportunities that would endow them with a minimum level of capabilities. Place is thus a roadblock to the realization of capabilities,<sup>234</sup> in part because of uneven development and in part because the government fails to ameliorate the service-provision consequences of that unevenness. Space, too, presents particular challenges<sup>235</sup> because serving spatially far-flung populations impedes the achievement of economies of scale and tends to drive up the per capita costs of service delivery.<sup>236</sup>

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<sup>232</sup> See Lisa R. Pruitt, *Gender, Geography and Rural Justice*, 23 BERKELEY J. GENDER L. & JUST. 338, 358, 359 (2008) [hereinafter *Gender, Geography*] (discussing ways in which spatiality undermines rural women's autonomy). See generally, Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 WIS. J. GENDER L. & JUST. 347 (2008) (discussing challenges that rural spatiality poses to domestic violence survivors in terms of access to law enforcement and other services).

<sup>233</sup> "Space' is an abstract concept that refers both to the familiar idea of physical surroundings (physical space) and to the impact that particular spatial configurations have on many aspects of life, from social relationships to economic opportunity (social space)." Pruitt, *Gender, Geography*, *supra* note 232, at 340; see also EDWARD W. SOJA, POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL AND SOCIAL THEORY 122-25 (1989) [hereinafter POSTMODERN GEOGRAPHIES]; Edward Soja, *The Spatiality of Social Life: Towards a Transformative Retheorisation*, in SOCIAL RELATIONS AND SPATIAL STRUCTURES 90, 92-93 (D. Gregory & J. Urry eds., 1985), *quoted in* Elizabeth Teather, *Contesting Rurality: Country Women's Social and Political Networks*, in GENDER AND RURALITY 31, 32 (Sarah Whatmore et al. eds., 1994) (explaining spatiality as two-way process by which society creates space, even as space shapes or constructs society); Ann Tickamyer, *Space Matters! Spatial Inequality in Future Sociology*, 29 CONTEMP. SOC. 805, 806 (2000).

<sup>234</sup> In the terminology of critical geography, place is "the physical space of material nature," a less abstract conception than space. SOJA, POSTMODERN GEOGRAPHIES, *supra* note 233, at 120. "Place' is a more concrete subset of space. Analysis based on place considers particular locales, taking into account the range of characteristics that distinguish one place from another." Pruitt, *Gender, Geography*, *supra* note 232, at 340-41. Nussbaum explicitly recognizes place as an impediment to capabilities in the transnational or global context by noting differences among nations. See *infra* note 243.

<sup>235</sup> See Tickamyer, *supra* note 233, at 806 ("Space can be conceptualized in three ways: as *place* — the particular locale or setting; as *relational units* that organize ideas about places and implicitly or explicitly compare locations, and as *scale*, or the size of the units to be compared.").

<sup>236</sup> See Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219, 260 (2010) [hereinafter *Justice Deserts*]; Lisa R. Pruitt, *Spatial Inequality as Constitutional Infirmary: Equal Protection, Child Poverty and Place*, 71 MONT. L. REV. 1, 75 (2010) [hereinafter *Equal Protection, Child Poverty and Place*]. Adiga also mentions this in his Marketplace interview.

B. *Adequacy, Equality, and the Hybrid Concept of Parity*

Nussbaum's recognition of power disparities, including that associated with the rural-urban axis, suggests a concern with equality. Indeed, in addition to calling for a minimum threshold of each capability or right — what is often referred to as “adequacy” in various U.S. legal contexts<sup>237</sup> — Nussbaum also references equality as a goal.<sup>238</sup> She writes:

We have seen that the idea of dignity is spelled out from the beginning in terms of equality: it is the *equal dignity* of human beings that demands recognition. Here the idea of equality is essential: we must add it to the bare idea of dignity in order to articulate the goal in an adequate way.<sup>239</sup>

Nussbaum elsewhere summarizes the salience of equality as a goal with respect to different types of capabilities:

Some capabilities must be secured to citizens on a basis of equality, or equal dignity has not been respected. Others, however, do not seem to have this intrinsic relationship to dignity; with these, the capabilities approach supplies a threshold of adequacy.<sup>240</sup>

Nussbaum thus distinguishes between socioeconomic rights on the one hand and civil and political rights on the other, suggesting adequacy is the standard for the former, equality the standard for the latter. Elsewhere, however, she articulates a standard that appears to be a hybrid of adequacy and equality when rights such as education and health care are at stake. Nussbaum writes:

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*Marketplace: Reading 'Between the Assassinations,' supra note 32.*

<sup>237</sup> See Pruitt, *Equal Protection, Child Poverty and Place*, *supra* note 236, at 802 (arguing that minimum level of food and shelter are necessary to meet dignity right guaranteed by Montana Constitution, particularly as regards child subjects, who are not autonomous but are necessarily dependent); Pruitt & Colgan, *Justice Deserts*, *supra* note 236, at 219 (observing that standard for provision of counsel to indigent defendants is adequacy rather than equality); Anna Williams Shavers, *Rethinking the Equity v. Adequacy Debate: Implications for Rural School Finance Reform Litigation*, 82 NEB. L. REV. 133, 146 (2003).

<sup>238</sup> See NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 80 (listing as capability 10(B) “Control Over One’s Environment, Material” and specifying “having property rights on an equal basis with others; having the right to seek employment on an equal basis with others”).

<sup>239</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 292.

<sup>240</sup> *Id.* at 295.

In some areas that seem to fall on the material side, however, it does seem clear that grossly unequal shares fail to meet the adequacy condition. . . . At least where primary and secondary education are concerned, adequacy does appear to require something close to equality, or at least a very high minimum . . . . The same is true of basic essential health care.<sup>241</sup>

Nussbaum thus acknowledges the desire for equality in relation to socioeconomic rights such as education and health care, the very ones that are my focus here.<sup>242</sup> I am going to call this hybrid concept —

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<sup>241</sup> *Id.* at 294 (providing U.S. example of education funding disparity: “If education, for example, is arranged as it currently is in the United States, in such a way that students in a rich school district may have as much as 75 to 100 times as much spent on them as is spent on students in a poor district, such an allocation does seem to be an intrinsic violation of a norm of equal dignity and equal political liberty”). She also discusses what geographers call scale, specifying that access across national boundaries should be roughly equal, at least where these foundational capabilities are at issue. Nussbaum writes, “In the international case we should aggressively pursue equality between nations in capabilities that are especially closely linked to the idea of equal human dignity, including primary and secondary education and access to basic health care.” *Id.* at 294. See also *id.* at 269 (discussing variations across national boundaries and, therefore, recognizing relevance of “place”).

<sup>242</sup> *Id.* at 292-93. Nussbaum writes:

But this idea has implications for many of the capabilities on our list as well. It appears that all the political, religious, and civil liberties can be *adequately* secured only if they are *equally* secured. To give some groups of people unequal voting rights, or unequal religious liberty, is to set them up in a position of subordination and indignity vis-à-vis others. It is to fail to recognize their equal human dignity.

*Id.* She subsequently writes:

For the capabilities approach, at any rate, equality is important at the very base of the theory; for it is not just human dignity that must be respected, it is equal human dignity. This role for equality, however, does not entail that equality is a reasonable goal with regard to all the central capabilities, a position that has been the target of reasonable criticism by Ronald Dworkin and others. Some capabilities must be secured to citizens on a basis of equality, or equal dignity has not been respected. Others, however, do not seem to have this intrinsic relationship to dignity; with these, the capabilities approach supplies a threshold of adequacy. Some nations and individuals may prefer a more egalitarian solution with these capabilities as well. But it seems likely that if we want a political conception that can achieve an overlapping consensus among people who differ in their comprehensive ethical and religious doctrines, especially when we are considering transnational transfers of wealth, this conception is more likely to prove broadly acceptable than one that insists on equality in all the central capabilities.

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which is part adequacy, part equality — “parity.” It is a standard lower than strict equality that nevertheless is relative, a standard that *does* compare what different populations get in terms of government services.

Interestingly, Nussbaum most often articulates the goal of parity in the international or transnational context — that is, among nations.<sup>243</sup> She also articulates it, however, in reference to subnational units and regional variations, writing, “[a]ny theory of justice that aims to provide a basis for decent life chances and opportunities for all human beings must take cognizance both of inequalities *internal to each nation* and of inequalities between nations.”<sup>244</sup> Nussbaum also notes the “complex intersections of these inequalities in a world of increased and increasing global interconnection.”<sup>245</sup> In other words, the global is the local, and vice versa.<sup>246</sup> It is not clear why Nussbaum appears to see gross disparities between access to these foundational services and the capabilities they endow as more objectionable across international boundaries than across state or municipal boundaries. Indeed, it is arguably more logical to expect parity within a nation-state than among nation-states.<sup>247</sup>

### C. *Distributive Disparities Across the Rural-Urban Axis*

My project brings these observations about the relevance of geography to capabilities together with a discussion of parity. It does so in relation to geographic distribution of resources related to the

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*Id.* at 295 (footnotes omitted).

<sup>243</sup> For example, Nussbaum asserts that, among other limitations, traditional contractarianism too easily assumes an equal balance of power between nations. *Id.* at 269 (“Unfortunately . . . inequalities between nations that make [Rawls] exclude some nations in order to conform to the Humean Circumstances of Justice are translated into inequalities between persons in basic life chances. There is no time when a human or even a potential human is alive that such inequalities do not obtain.”); see also *id.* at 294. Critical geographers would express this comparison among nations as referencing the scale of the globe. See Pruitt, *Gender, Geography*, *supra* note 232, at 341, 381-82 (analyzing parity through scale).

<sup>244</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 294 (emphasis added).

<sup>245</sup> *Id.* at 294.

<sup>246</sup> See Pruitt, *Gender, Geography*, *supra* note 232, at 341; *The Promise of CEDAW for Rural Women*, *supra* note 15, at 709 (referring to global countryside).

<sup>247</sup> Nussbaum’s use of the example of funding disparities for primary and secondary education in the United States supports the idea that we should aspire to some degree of parity among subnational units. See *supra* text accompanying note 241. In addition, her concern that greater expectations of equality regarding capabilities may impede international consensus regarding capabilities seems to support the point. See *infra* note 261 and accompanying text.

most fundamental capabilities: life, bodily health, and education. I see the capabilities framework as aspiring to a degree of parity regarding these, including parity across the rural-urban axis.<sup>248</sup>

Other scholars have offered somewhat similar arguments regarding spatial inequalities and distributive justice, albeit without the focus on rural disadvantage *per se*. Professor Gregory Alexander, for example, argues that “human flourishing requires distributive justice, the ultimate objective of which is to give people what they need in order to develop the capabilities necessary for living the well-lived life . . . .”<sup>249</sup> He expands on this in particular in relation to the very core capabilities that are my focus, writing:

If human capacities such as survival (including physical health), the ability to engage in practical reasoning, and to make reasoned decisions about how to live our lives are components of the well-lived life, then surely we are all obligated to support and nurture the social structures without which those human capabilities cannot be developed.<sup>250</sup>

In a similar vein, Professor Jennifer Prah Ruger’s discussion of health care resources and access refers to parity not only among nations but also within them:

Global inequalities in, and threats to, health capabilities are morally troubling simply because they are morally arbitrary, so often just an accident of birth in an impoverished or remote country *or county*. These inequities require rectification; morally arbitrary accidents should not control one’s health or survival.<sup>251</sup>

Professor Denise Meyerson has also written of distributive inequities *within* nations, discussing them as possible violations of constitutional equality guarantees.<sup>252</sup> Most recently, Professor Sandra Fredman has

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<sup>248</sup> See NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 71 (referring to distribution of wealth and income as relevant to capabilities).

<sup>249</sup> Alexander, *supra* note 29, at 768.

<sup>250</sup> *Id.* at 769.

<sup>251</sup> Ruger, *Global Health Justice*, *supra* note 29, at 266 (emphasis added).

<sup>252</sup> See Denise Meyerson, *Equality Guarantees and Distributive Inequity*, 19 PUB. L. REV. 32, 51 & n.88 (2008) (analyzing inequitable distribution of government resources in relation to constitutional equality guarantees and discussing several Indian decisions, including *Paschim Banga Khet Mazdoor Samity v. West Bengal*, A.I.R. 1996 S.C. 2426).

called for an integration of socioeconomic disadvantage concerns into law's broader equality agenda.<sup>253</sup>

#### D. *The Role of the State*

This recent work by Meyerson and Fredman reminds us that the state plays a role in creating distributive inequities, and it must play a role in ameliorating them.<sup>254</sup> Nussbaum and Sen's capabilities framework also has clear implications for nation-states, which they see as playing a critical role in endowing citizens with capabilities. Nussbaum writes, for example, that "in certain core areas of human functioning a necessary condition of justice for a public political arrangement is that it delivers to citizens a certain basic level of capability."<sup>255</sup> Sen similarly talks of "social opportunities of education and health care" possibly requiring "public action."<sup>256</sup> This focus on the role of the state is, of course, not only grounded in capabilities; it is widely recognized by policy makers. The 2005 GDPRD, for example, observes that "the poor are poor because policies, laws and regulations (or absence of them) circumscribe their opportunities."<sup>257</sup> Institutional change is thus necessary "to enable pro-poor growth."<sup>258</sup>

Nussbaum links capabilities directly to law, calling it a "political doctrine," albeit an incomplete one, which can be "embodied in a list of constitutional guarantees."<sup>259</sup> Elsewhere, she presents capabilities as "the philosophical underpinning for an account of basic constitutional principles that should be respected and implemented by the

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<sup>253</sup> Sandra Fredman, *Positive Duties and Socio-Economic Disadvantage: Bringing Disadvantage onto the Equality Agenda*, 2010 EUR. HUM. RTS. L. REV. 290, available at <http://ssrn.com/abstract=1631771> (arguing that distributive inequalities should be considered in relation to status-based discrimination).

<sup>254</sup> See generally Meyerson, *supra* note 252 (discussing roles of political as well as judicial branches).

<sup>255</sup> NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 71.

<sup>256</sup> SEN, DEVELOPMENT AS FREEDOM, *supra* note 2, at xii. Elsewhere, he notes the problem of government's "neglect of public facilities." *Id.* at 3. He also writes of the importance of recognizing that economic growth empowers not only individuals in terms of "raising private incomes but also in making it possible for the state to finance social insurance and active public intervention." *Id.* at 40.

<sup>257</sup> Wolz, *supra* note 11, at 42.

<sup>258</sup> *Id.* The GDPRD further observes that the private sector is typically "not attracted to the [rural] sector due to poor profit margins, high risks and transaction costs, and the long payback period for investments." *Id.* at iv; see also Somik V. Lall & Sanjoy Chakravorty, *Industrial Location and Spatial Inequality: Theory and Evidence from India*, in SPATIAL DISPARITIES, *supra* note 54, at 173, 183 (noting private sector's aversion to "lagging and inland regions").

<sup>259</sup> NUSSBAUM, FRONTIERS OF JUSTICE, *supra* note 21, at 155.

governments of all nations, as a bare minimum of what respect for human dignity requires.”<sup>260</sup> Nussbaum advocates not only that international agencies and NGOs use the capabilities framework, but also that it provide a “basis for international treaties and other documents that may be adopted by nations and incorporated in that way into national, as well as international, law.”<sup>261</sup>

Further, Nussbaum lauds the Constitution of India, among other progressive constitutions such as those of the Republic of South Africa and Germany, which protect the right to human dignity, an “intuitive idea” that is at the very core of capabilities thinking.<sup>262</sup> Nussbaum also praises the Indian Constitution’s embrace of affirmative action as consistent with nondiscrimination because it aims to “better[ ] the lot of deprived groups.”<sup>263</sup> She contrasts the Indian conception of equality with that in the United States, which she labels “bare formal” equality, writing that the former reflects “a shared understanding that equality has material and institutional prerequisites, and that it is best understood to require the elimination of systematic hierarchies of all kinds.”<sup>264</sup>

In Part I, I documented the consequences of systematic hierarchies that leave India’s rural residents underserved by various scales of the government, particularly in comparison to their urban counterparts. If we agree with Nussbaum’s assertion that when “people are systematically falling below the threshold in *any* of these core areas” the situation is “both unjust and tragic, in need of urgent attention,”<sup>265</sup> then rural residents’ systematic deprivation of the core capabilities of life, bodily health, and education demands government intervention. The Indian Constitution lays a partial groundwork for action that would ameliorate disparities in the provision of core services. This is reflected in the construction of Article 21 to include the rights to health care and education and in the constitutional embrace of affirmative action and substantive equality. The next subpart proposes remedial actions that the Government of India and its subnational governing units should take to bring rural residents up to parity with their urban counterparts, thereby achieving greater spatial equality and fostering more even development.

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<sup>260</sup> NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 5.

<sup>261</sup> *Id.* at 103. She also calls for its political use to justify, for example, economic sanctions against nations that do not respect their citizens’ capabilities. *Id.* at 104.

<sup>262</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 155.

<sup>263</sup> NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 25.

<sup>264</sup> *Id.* at 25.

<sup>265</sup> *Id.* at 71 (emphasis added).

*E. Remedial Responses*

Focusing on what the state should do to ameliorate grossly uneven development as it impacts life, bodily health, and education takes us back to Nussbaum and Sen's recognition of the significance of context and of different variables that may influence the level of resources needed for different persons to achieve their capabilities. In short, they recognize the import of antecedent inequalities.<sup>266</sup> As Fredman has observed, their attention to context is akin to substantive equality.<sup>267</sup> "Equal consideration for all," Sen writes, "may demand very unequal treatment in favour of the disadvantaged."<sup>268</sup> Among other factors, Sen notes the relevance of "environmental heterogeneities," of which the rural-urban continuum is an aspect.<sup>269</sup> Nussbaum explains that the

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<sup>266</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 99 (discussing needs of impaired persons for "atypical social arrangements" to live productive lives); NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 68-69 (discussing "need to devote more resources to those who encounter obstacles," such as the obstacle patriarchy represents to women's literacy); *id.* at 99 (asserting that "[a]nalyzing economic and material rights in terms of capabilities thus enables us to set forth clearly a rationale . . . for spending unequal amounts of money on the disadvantaged, or creating special programs to assist their transition to full capability"); AMARTYA SEN, *INEQUALITY RE-EXAMINED 1* (1992); *see also* Stein & Stein, *supra* note 29, at 1216-17 (noting, in discussion of capabilities, that "individuals may require different levels of resources in order to achieve their potential").

<sup>267</sup> Fredman, *supra* note 215, at nn.65-66 (2009); *see also* NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 69 (noting need not only for "formal equality of opportunity, but also truly fair equality of opportunity"); *id.* at 25 (noting that Indian Constitution, which she praises, does not understand equality in "bare formal way").

<sup>268</sup> AMARTYA SEN, *INEQUALITY RE-EXAMINED*, *supra* note 266, at 1. Elsewhere, he writes, under the heading "Well-Being: Diversities and Heterogeneities" of "a number of contingent circumstances, both personal and social," that limit what people can do with a given bundle of commodities. In particular, he writes of: (1) personal heterogeneities, e.g., age, disability, pregnancy; (2) environmental diversities, e.g., presence of infectious diseases, pollution; (3) variations in social climate; (4) differences in relational perspectives; and (5) distribution within the family. SEN, *DEVELOPMENT AS FREEDOM*, *supra* note 2, at 70-71. Nussbaum elsewhere similarly focuses on the individual's context when writing:

To treat A and B as equally well-off because they command the same amount of resources is, in a crucial way, to neglect A's separate and distinct life, to pretend that A's circumstances are interchangeable with B's, which may not be the case. To do justice to A's struggles, we must see them in their social context, aware of the obstacles that the context offers to the struggle for liberty, opportunity, and material well being.

NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 22, at 69.

<sup>269</sup> SEN, *DEVELOPMENT AS FREEDOM*, *supra* note 2, at 70-71.



“capabilities approach directs us to examine real lives in their material and social settings.”<sup>270</sup> In discussing socioeconomic rights, Nussbaum similarly advocates spending disparities to respond to antecedent inequalities: “analyzing economic and material rights in terms of capabilities thus enables us to set forth clearly a rationale we have for spending unequal amounts of money on the disadvantaged, or creating special programs to assist their transition to full capability.”<sup>271</sup>

Fredman has thus characterized the capabilities framework as “sensitive to the fact that the same input might have very different results, depending on an individual’s own circumstances as well as her political or physical environment.”<sup>272</sup> Indeed, geography is physical environment. One study of spatial inequality in the developing world similarly opines that “*uniform* institutional arrangements such as nation-wide policies are likely to make a negative contribution.”<sup>273</sup>

Nussbaum uses the examples of women and the disabled to illustrate the varying needs of individuals and the significance of context. Of the disabled, Nussbaum writes, “A person whose limbs work well needs few resources to be mobile, whereas a person with paralyzed limbs needs many more resources to achieve the same level of mobility.”<sup>274</sup> Noting that the developed world may take for granted too much and therefore not notice variations because we “can afford to bring all individuals to a high level of physical attainment,” she writes:

If we wish to bring all citizens of a nation to a given basic level of educational attainment, we will need to devote more resources to those who encounter obstacles from traditional hierarchy or prejudice: thus women’s literacy will prove more expensive than men’s literacy in many parts of the world. . . . If we operate only with an index of resources, we will frequently reinforce inequalities that are highly relevant to well-being. This is an especially grave defect when it is women’s quality of life we want to consider; for women who begin from a position of traditional deprivation and powerlessness will frequently

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<sup>270</sup> NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 71. This explanation echoes Sen’s sensitivity to “environmental heterogeneities.” See SEN, DEVELOPMENT AS FREEDOM, *supra* note 2, at 70-71.

<sup>271</sup> NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 99.

<sup>272</sup> Fredman, *supra* note 215, at nn.65-66.

<sup>273</sup> Anthony Shorrocks & Guanghua Wan, *Spatial Decomposition of Inequality* 13 (U.N. Univ. World Inst. for Dev. Econ. Res., Discussion Paper No. 2004/1, 2004), available at [http://www.wider.unu.edu/publications/working-papers/discussion-papers/2004/en\\_GB/dp2004-001/](http://www.wider.unu.edu/publications/working-papers/discussion-papers/2004/en_GB/dp2004-001/).

<sup>274</sup> NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 68.

require special attention and aim to arrive at a level of capability that the more powerful can easily attain.<sup>275</sup>

Nussbaum acknowledges here and elsewhere the unevenness of women's situation and opportunity in comparison to men. She is very sensitive to gender-based power imbalances.<sup>276</sup>

Nussbaum elsewhere also acknowledges power disparities across the rural-urban axis. We could thus substitute "rural" for "women" in the preceding paragraph and generate an argument for special attention to rural populations. That is, raising literacy among rural populations may require more resources than doing so among urban populations. This reality is attributable to the enhanced cost of serving spatially dispersed populations. It is also likely attributable to attitudes from those within and without rural communities, attitudes associated with the stasis and custom that typically mark rural places.<sup>277</sup> Thus, a similar statement that recognizes the challenges associated with rural development might sound like this:

If we wish to bring all citizens of a nation to a given basic level of educational attainment, we will need to devote more resources to those who encounter obstacles from [spatiality, infrastructure and human capital deficits, tradition, or prejudice]: thus [fostering literacy and other capabilities among rural populations] will prove more expensive [than that of urban populations] in many parts of the world. If we operate only with an index of resources, we will frequently reinforce inequalities that are highly relevant to well-being. This is an especially grave defect when it is [rural residents'] quality of life we want to consider; for [rural residents] who begin from a position of traditional deprivation and powerlessness will frequently require special attention and aim to arrive at a level of capability that the more powerful can easily attain.

Physical and social variations in space and place — just like the physical and social variations associated with gender and disability —

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<sup>275</sup> *Id.* at 68-69.

<sup>276</sup> *See generally id.*

<sup>277</sup> *See supra* notes 266-275 and accompanying text; *see also* Johanna E. Bond, *Gender, Discourse and Customary Law in Africa*, 83 S. CAL. L. REV. 509, 515, 518, 549, 557 (2010) (discussing greater role of customary law and traditional leaders in rural places, as compared to urban ones, in Africa); Pruitt, *The Promise of CEDAW for Rural Women*, *supra* note 15, at 752-53 (discussing stasis as characteristic of rural communities).

mean that rural lives are not interchangeable with urban ones for purposes of the government intervention required for the enjoyment of the capabilities of life, bodily health, and education. Failure to attend to rural development — essentially deferring to the present state of grossly uneven development and even exacerbating it with development efforts that merely drive rural residents to cities — will only aggravate spatial inequalities in access to government services, as the urban juggernaut gains force, and the rural remnant languish.

#### CONCLUSION

“If I were making a country, I’d get the sewage pipes first, then the democracy . . . .”

ARAVIND ADIGA, *THE WHITE TIGER*<sup>278</sup>

Adiga provocatively suggests that socioeconomic rights — such as those associated with the life and bodily health capabilities — are more important than civil or political ones. In fact, the two varieties of capabilities are not at odds. Sen explains:

[T]here is strong evidence that economic and political freedoms help to reinforce one another . . . . Similarly, social opportunities of education and health care, which may require public action, complement individual opportunities of economic and political participation and also help to foster our own initiatives in overcoming our respective deprivations.<sup>279</sup>

Nevertheless, this statement about the relative priorities of the state by *The White Tiger*’s central character should get us thinking about the ways in which the absence of core infrastructure associated with life, bodily health and education prevents India’s rural residents from enjoying not only those capabilities, but also others associated with civil and political rights — with democracy itself.

This Article has focused on disparities across the rural-urban axis within the nation-state of India. Martha Nussbaum has called us to attend to such inequalities “internal to each nation”<sup>280</sup> because we

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<sup>278</sup> ADIGA, *supra* note 1, at 80.

<sup>279</sup> SEN, *DEVELOPMENT AS FREEDOM*, *supra* note 2, at xii. Elsewhere Sen implies the synergy or complementarity of political rights with socioeconomic ones, calling for the “removal of major sources of un-freedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states.” *Id.* at 3.

<sup>280</sup> NUSSBAUM, *FRONTIERS OF JUSTICE*, *supra* note 21, at 225. Elsewhere she refers to all citizens “of a nation” getting a basic level of attainment. NUSSBAUM, *WOMEN AND*

want to provide “decent life chances and opportunities” to all.<sup>281</sup> Elsewhere she writes, “We may or may not want to improve the lot of the worst off . . . but we certainly shouldn’t make decisions without knowing how they are doing.”<sup>282</sup> The vast majority of India’s worst off are rural. Not only are they lacking resources and power, in the context of an increasingly metrocentric world, they have been rendered nearly invisible. India should not make decisions without seeing them, without attending to the rural-urban axis as a very powerful basis of disparities in well-being and opportunity. That India is becoming more urban by the day — the percentage of its population living in rural areas declining — does not justify inaction. Nussbaum asserts that “problems cannot be ignored or postponed on the grounds that they affect only a small number of people,”<sup>283</sup> but India’s rural population is far from small and will remain robust for decades, even if the urban juggernaut maintains its current pace. India’s development process should, to use the terminology of Sen, eliminate unfreedoms, including serious deficits in capabilities that are critical to fostering human and social capital.

If India’s “development” efforts drive rapid, unsustainable urban growth by neglecting rural populations and aggravating “desperation and hunger in the countryside,”<sup>284</sup> they will not endow the poor with capabilities. If India’s development strategy is one that simply fuels the urban juggernaut by, for example, supporting intensive production agriculture, thereby eliminating rural jobs, the present state of uneven development will only become more uneven, and more of the rural poor will simply join the urban poor. *Who gets what* in India — who enjoys particular capabilities — will continue to be enormously influenced by *where* one lives, as spatial inequalities are aggravated.

For development to occur in a way that truly endows citizens with freedom, citizens’ agency must be respected. Thus, the central capabilities concept of human autonomy should be invoked in shaping development’s path. Development trajectories should respect the desires and priorities of rural residents in a way that makes rural populations the subjects of development, and not only its objects.<sup>285</sup>

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HUMAN DEVELOPMENT, *supra* note 22, at 68.

<sup>281</sup> NUSSBAUM, FRONTIERS OF JUSTICE, *supra* note 21, at 225.

<sup>282</sup> NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 22, at 62. In fact, Nussbaum’s capabilities framework leaves no one behind. See *infra* note 283.

<sup>283</sup> NUSSBAUM, FRONTIERS OF JUSTICE, *supra* note 21, at 100 (discussing problem of minorities).

<sup>284</sup> JEFFREY SACHS, COMMON WEALTH: ECONOMICS FOR A CROWDED PLANET 27 (2008).

<sup>285</sup> See ARTURO ESCOBAR, ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD WORLD 162 (1995), discussed in Pruitt, *The Promise of CEDAW for Rural*

Capabilities' focus on autonomy makes room for recognition that rural residents may wish, for example, not to embrace technology to accelerate into modernity or produce for the market.<sup>286</sup> The core capabilities principle that people are agents, not merely ends, must apply to rural residents, too. They should have a say in the course of rural development and not be merely ends for India to achieve modernity, urbanization, or increased production for the market.

To foster capabilities along the rural-urban continuum, India needs a plan that attends concurrently to both urban planning and rural development. India and other nations facing similar migration challenges — many of them in Asia — should unhinge “urban” from “planning” and “rural” from “development” and recognize that all places along the rural-urban continuum — as well as the relationships among these places — need both planning and development.<sup>287</sup> So do the relationships among these places. That is, India needs a master plan to even out the country's development path, a plan that considers the types of sustainable development that will optimize all citizens' capabilities, regardless of the population size and density of where they live. In establishing such a plan, India should consider the role that smaller urban centers might play, rather than mindlessly fueling the megacities bandwagon.<sup>288</sup>

Various choices along the rural-urban continuum — that is, various sizes of population clusters with different degrees of economic integration with surrounding rural areas — offer different degrees of economic sustainability.<sup>289</sup> A 2007 Report of the UN Population Fund

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*Women*, *supra* note 15, at 726-27. See also Pruitt, *Deconstructing CEDAW's Article 14*, *supra* note 27, at 392 (noting that CEDAW identifies both rural areas and women as objects of development).

<sup>286</sup> Interestingly, Article 14 of the Convention on the Elimination of all Forms of Discrimination against Women (“CEDAW”) also suggests the importance of human autonomy in relation to development, specifying rural women's right to “participate in the elaboration and implementation of development planning at all levels.” CEDAW art. 14(2)(a), discussed in Pruitt, *Deconstructing CEDAW's Article 14*, *supra* note 27, and in Pruitt, *The Promise of CEDAW for Rural Women*, *supra* note 15, at 732, 749-50.

<sup>287</sup> The Global Donor Platform for Rural Development (“GDPRD”) recognizes the interdependence of rural and urban economies, observing that “rural development and rural opportunities are necessarily part of larger national economic systems, and the overall economic policy must provide space and support for rural development reflecting the possibilities of the rural poor. Change at the sectoral level is essential, for it is here that the critical, but narrower, agricultural issues are determined.” Wolz, *supra* note 11, at 42.

<sup>288</sup> This is consistent with what Adiga has suggested, and with some economists' proposals to solve problems created by mass migration to megacities. See *Marketplace: Reading 'Between the Assassinations'*, *supra* note 32.

<sup>289</sup> See RURAL POVERTY REPORT 2011, *supra* note 33, at 21 (noting the impact of

observed that “cities draw together many of Earth’s major environmental problems: population growth, pollution, resource degradation and waste generation. Paradoxically, cities may also hold our best chance for a sustainable future.”<sup>290</sup> One reason often noted for cities’ promise in relation to long-term sustainability is that urbanization correlates to lower fertility rates.<sup>291</sup> Policy makers rarely acknowledge, however, that higher rural fertility rates are surely in part a function of lack of access to contraception.<sup>292</sup> That is, better delivery of health care to rural residents — including reproductive health — would surely close the gap between rural and urban birth rates.<sup>293</sup>

Further, lower urban fertility rates do not make cities more attractive forms of development *per se*. In the developing world in particular, problems of “inadequate water and sanitation, poor air quality (inside houses as well as outside) and limited or no waste disposal”<sup>294</sup> loom large. Internal migration will in many instances “convert[] the rural poor into urban poor,”<sup>295</sup> a phenomenon well

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small and medium size population clusters, as well as the increasing integration of rural and urban economies).

<sup>290</sup> U.N. POPULATION FUND, STATE OF THE WORLD POPULATION 2007: UNLEASHING THE POTENTIAL OF URBAN GROWTH 55 (2007), available at [http://www.unfpa.org/swp/2007/english/chapter\\_5/print/chapter\\_5.html](http://www.unfpa.org/swp/2007/english/chapter_5/print/chapter_5.html) (last visited Aug. 11, 2010); see also Elisabeth Rosenthal, *Third-World Stove Soot Is Target in Climate Fight*, N.Y. TIMES, Apr. 16, 2009, at A1.

<sup>291</sup> U.N. POPULATION FUND, *supra* note 290, at 2.

<sup>292</sup> See *supra* notes 138-139 (documenting lack of access to basic health services in rural India); Pruitt, *The Promise of CEDAW for Rural Women*, *supra* note 15, at 743.

<sup>293</sup> One government response to high rural birth rates is the state of Maharashtra’s practice of paying newlywed couples to wait two years before getting pregnant. Jim Yardley, *India’s Population Time Bomb, and Efforts to Defuse It*, N.Y. TIMES, Aug. 22, 2010, at A6 (noting that “[m]any rural women know little about family planning” and that this pilot program is “challenging deeply ingrained rural customs”; quoting one official’s opinion that “[a]n educated girl is your best contraception”).

<sup>294</sup> U.N. POPULATION FUND, *supra* note 290, at 4. Problems associated with rapid urban growth can be particularly problematic in the tropics. *Id.* at 59.

<sup>295</sup> IDRIS JAZAIRY ET AL., THE STATE OF WORLD RURAL POVERTY: AN INQUIRY INTO ITS CAUSES AND CONSEQUENCES 78 (1992); Pruitt, *Deconstructing CEDAW’s Article 14*, *supra* note 27, at 352 (citing to U.N. Secretary-General, *United Nations Decade for Women: Equality, Development and Peace: Women in Rural Areas: Rep. of the Secretary General*, ¶ 19, U.N. Doc. a/32/269 (Oct. 18, 1977) (asserting that “integrated government planning policies” that effectively integrate women in rural development can “reduc[e] their migration to urban areas, which only worsens the problem of marginality”). But see Taylor Barnes, *India, China Lead in Lifting People out of Urban Slums*, CHRISTIAN SCIENCE MONITOR, Mar. 18, 2010, available at <http://www.csmonitor.com/World/Global-News/2010/0318/India-China-lead-in-lifting-people-out-of-urban-slums-UN-says>.

illustrated by both Balram's migration in the *The White Tiger*, and in the award-winning film, *Slumdog Millionaire*.<sup>296</sup>

A great deal is at stake for India in managing its internal migration. Without successful development and planning along the rural-urban continuum and a reduction in the rural-urban income gap, India is unlikely to realize its potential as an economic or social force.<sup>297</sup> The same is true for many of India's neighbors in these early years of what may prove to be the Asian Century.

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<sup>296</sup> See also Polgreen, *New Arrivals*, *supra* note 13.

<sup>297</sup> See Yardley, *supra* note 31 ("India's ability, or inability, in coming decades to improve the lives of the poor will very likely determine if it becomes a global economic power, and a regional rival to China, or if it continues to be compared with Africa in poverty surveys.").