

The Right to Development: A New Human Rights Jurisprudence

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ABSTRACT

The idea of human rights and human development are integral to each other. In fact neither of them can afford to ignore the other. However, in the initial years of the United Nations there were reluctance among the academicians as well as the practitioner of these ideas of human rights and human development. They were quiet apprehensive to each other. But with the passage of time and the rise of the third world that is the developing nations and their insistence for their right to development the gap between these two ideas slowly but gradually reduced. This phenomenon culminated in the form of new human rights jurisprudence that is the right to development. After the initial hiccups this new jurisprudence is now being considered as an integral part of the human rights debate.

Keywords: Human Rights Jurisprudence, Right to Development

The advent of an International organization like United Nations was one the greatest moments in the history of human civilization which was established after the Second World War. During the Second World War the human race witnessed unprecedented violations of human rights and therefore when the world body was established, the protection and promotion of human rights was one of the important objectives of United Nations. To achieve this objective the world body wanted to have some universal principles of human rights which could take care of all kinds of human rights in an integrated and comprehensive manner. These aspirations saw the light of the day when Universal Declaration of Human Rights was adopted on 10 December 1948. At that time, the idea was to project the unity of concept of human rights. But since then the international community is also divided on the very idea of ‘what constitutes human rights?’ At that very moment the politics of human rights began at the international level and the concept of human rights was projected narrowly by various groups in accordance with their own perception of human rights. Broadly the world was divided into two groups. One gave preference to civil and political rights while the other vouched for social, economic and cultural rights. This politics of cold war prevented the desired result. Instead of one unified covenant, two separate covenants were adopted in 1966 - one on civil and political rights and other on economic, social and cultural rights.¹

It is in this backdrop, the world community primarily engaged with the civil and political notion of human rights. And social, economic and cultural rights took a back seat for a while since the politics of human rights was dominated by those who preferred civil and political rights over social, economic and cultural rights. However, it should not go unnoticed that human rights discourse remained parallel to the development discourse, which also originated at about the same time – after the second world war; but by and large primarily focused on economic development and to a lesser extent on socio-cultural issues.² It can be observed that human rights and human development historically evolved parallel to each other and initially remained on non- intersecting tracks.³ Therefore it can be said that the time for idea of human rights approach to development had not yet arrived.⁴

The convergence of human rights and development at the level of concepts can be noticed somewhere in 1970's, when a group of nations led by developing countries asserted their right to development in the prevailing international economic order, which they believed to be unjust and responsible for their under - development. They put forward their demand for the inclusion of right to development as an integral part of universal human rights by unifying the civil and political rights on one hand and economic social and cultural rights on the other. These aspirations of developing countries emerged in consolidated a form in the shape of a demand for a New International Economic Order (NIEO).The intention of the main protagonists

¹ Siddiquir Rahman Osmani, “An essay on the Human rights Approach to Development” in Arjun Sengupta, et. al., (Eds.), *Reflections on the Right to Development*, (110 - 126) at 110 (2005).

² *Ibid.*

³ Stephen P Marks, “The Human Rights Framework for Development: Seven Approaches”, in Arjun Sengupta, et. al., (Eds.), *Reflections on the Right to Development*, 23-60 at 23 (2005).

⁴ *Supra* note 1 at 111.

(developing nations) of NIEO was to set up a mechanism, so that they can claim co-operation and assistance of developed nations in their economic development. However, the confrontationist mode adopted by developed (also referred to as North) as well as developing nations (also referred to as South) proved to be an obstacle in the acceptance of the idea of right to development as a part of the human rights. But when this sharpness of North -South confrontation diluted with the passage of time the demand for the right to development reincarnated itself once again in 1980s along with other movements that were already on going for the unification of civil and political rights with economic, social and cultural rights.

All the above aspirations culminated in the general assembly when, in a landmark event on 4th December, 1986, the General assembly adopted new human rights in the declaration on the right to development. The right to development had been in gestation since at least 1981 when the commission on human rights established a working group of 15 governmental experts. This Commission received various substantial inputs from nongovernmental organizations too.⁵

The right to development is one of the most highly debated and contentious issues in international relations. Since the 1970s when the issue first featured on the agenda of international community, the debate over right to development has continued unabated but with little progress towards consensus on the concept and the method of its implementation.⁶ The extent of controversy regarding the right to development can be judged from remarks made by Jack Donnelly who is a professor of political science at the university of North Carolina. He made the following remarks:⁷

“A philosopher is a person who goes into a dark room on a moonless night to look for a nonexistent black cat. A theologian comes out claiming to have found the cat. A human rights lawyer, after such an onsite visit, sends a communication to the Commission on Human Rights; and a member of the Commission leaves the room drafting a resolution on the treatment of black cats. This, in a nut shell, is uncomfortably close to the history of the so-called human right to development.”

However, in spite of all these controversies and placed in interface between human rights and development, the concept of right to development seeks to promote development as human right. Nevertheless, political differences have prevented the identification of exact contours of the definition and implementation of right to development.⁸ In recent years work has been initiated at international fora such as United Nations High Commission for Human Rights towards identifying the content of right to development. To achieve this objective, open - ended working groups and Human Rights Commission have deliberated on reports submitted by the Independent Expert on the right to development who was appointed by United Nation in 1999.⁹ It is pertinent to note here that the declaration on the right to development has not yet been converted into a treaty¹⁰ which is a clear indicator that the nations are not legally bound to adhere to the principles included in the declaration. But the very adoption of the declaration on the right to development and its reconfirmation as a human right in many subsequent international declarations creates a moral obligation on the nations to implement it.¹¹ At the same time nations have ratified treaties on separate categories of rights; they have also made legal by binding commitments to implement all those rights that constitute the right to development.¹² Moreover, Arjun Sengupta the Independent Expert appointed by UN has identified some of the essential components which are indispensable to the right to development. He identified the right to food, right to education and right to health as those essential components of development right. The independent expert emphasized the fact that human rights are interdependent and indivisible. However, societies can set priorities while implementing the right to development and can prefer one component over the others according to their particular needs.

Although, after the enactment of the declaration on the right to developments it has been discussed in many international conferences and academic seminars and some progress has been made in crystallizing the concept of the right to development, yet as mentioned above, that the constituent rights of right to

⁵ Upendra Baxi, “The development of the Right to development” in *Mambrino’s Helmet?: Human Rights for a changing world*, 22-32 at 22 (1994).

⁶ Centre for Development and Human Rights, *The Right to Development: A Primer*, 16 (2004).

⁷ Jack Donnelly, “In Search Of The Unicorn; The Jurisprudence of The Right To Development”, *California Western International Law Journal*, Vol. 15, 473-509 at 473 (1985).

⁸ *Supra* note 6.

⁹ *Ibid*.

¹⁰ *Supra* note 1 at 111.

¹¹ *Ibid*.

¹² *Ibid*.

development are very important. Simultaneously, substantial progress has been made in the direction of implementation of the component rights nationally and internationally.

As far as the implementation of right to development and its constituent rights in India is concerned, it is pertinent to mention here that although the Government of India remained an active crusader for this declaration¹³ and it has been vocal for this right at international forum and getting it enforced against developed nations¹⁴ yet India's track record at domestic level has not been that impressive. Nevertheless recently some major steps have been taken for the implementation of right based approach to development in India. But at the same time India is also going through various kinds of social, political and economic transition where the process and patterns of development are being regularly questioned. It is true that in the era of globalization India cannot remain aloof from globalization as well as the process of development but there are also various instances of public resistance. Many people are gearing up against the so - called models of development.¹⁵ In these circumstances, where India being a developing country needs development ; but in this process it will have to ensure that this development is based on a right based approach to development and it adheres to all the principles of right to development.

The right to development describes the process of development and emphasizes on the participation of the people in the process of development. NGOs are playing a very crucial role in the implementation of the component rights of the right to development in India and abroad. In this connection the role NGOs can be examined.

From the above discussion it is apparent that various challenges lie ahead for the declaration of right to development at a conceptual level as well as in its practical implementation, nationally as well as internationally.

¹³ *Supra* note 5 at 23.

¹⁴ As a claim of developing nation against the develop nations for development assistance.

¹⁵ See: Venketsh Ramkrishan, "The great land grab" in *Frontline* at 4, June 17, 2011.