

## “Right to development” as a fundamental right -A conceptual analysis

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**ABSTRACT:** This paper address the issue of absence of an explicit “RIGHT TO DEVELOPMENT” in the Indian constitution. Comparing with Africa and analyzing the law and the supreme court decisions this paper suggest that even without explicit provision, Indian constitution incorporates in itself social, cultural, political, economical as well as spiritual development. Describing right to development as the third generation right i.e. the solidarity rights whereas civil and political rights are first generation rights and economic social and cultural rights are second generation rights. The right to development as a human right was adopted by the UN in 1986, countries like Africa has also come up with the new jurisprudence promoting the right to development as the justiciable rights. This paper seeks to examine and find out whether the “RIGHT TO DEVELOPMENT” should be incorporated separately under Part III as a justiciable right or can it be achieved through the other mentioned fundamental rights of the Indian constitution? It concludes that the Fundamental Rights sufficiently address the contours of right to development.

**Key Words:**

### INTRODUCTION

The right to development as a human right has evolved directly from the basic provisions of the charter of United Nations. It was not till 1960 that the United Nations began to give attention to the problem of development. The declaration on the right to development which stated unequivocally that the right to development is a human right, was adopted by the UN in 1986 by an overwhelming majority with the US casting the single dissenting vote. It came almost nearly 38 years after the adoption of universal declaration of human rights. Eleanor Roosevelt, who was the head of the US delegation during the drafting of the universal declaration should rightly be given the credit for identifying and advocating the right to development for the very first time where she stated “we are willing a bill of right for the world , and ... one of the most important right is the opportunity for development”<sup>1</sup>

The right to development was defined as a collective right only, whose subjects could be juridical persons of various natures (states, towns, regions, provinces, municipalities) with the developed countries and the international communities having obligations to assist in development. Leslie J. Macfarlane, a political scientist pointed out that “The right to development as a human right should not be treated as an attractive but practically irrelevant piece of political window-dressing, but as a real opportunity for giving international effect to the objective of promoting economic development as part of the broader human perspective outlined by the United Nations.” In 1972 the concept of the right to development as a human right was first given a succinct definition by Kaba M’Baye. J. first president of the Senegalese Supreme Court that “The right to development is the right of all men. Each man has the right to live better.” He propounded a two-fold concept of development i.e. a law of development as an object right and the right to development as a human right and a technique of development.<sup>2</sup>

There is no one particular right that alone can be called an ingredient of the right to development. The right to development is a concept which encompasses all aspects that have a relation to an individual’s life- be it the economic, social, cultural, civil, political or any other aspect. All the processes have an effect on one’s life directly or indirectly. Thus, it may be said that the right to development is something that encompasses all human rights that have an importance in one’s life. All rights play an important part in the holistic development of a person. Hence, the right to development is a homogenous mixture of all rights. All rights have to be given importance in the process of development so that a person and subsequently a nation is

<sup>1</sup>Arjun Sengupta, Right to development as a human right, Economic and political weekly, Vol. 36, No. 27, (Jul.7-13-2001)

<sup>2</sup> K.L. Dalal, Man’s right to development, India International Centre Quarterly, Vol. 15, No. 2 (SUMMER 1988), 31-07-2018

able to realize the right to development completely and successfully. It is very hard to define the contents of the right to development because no two countries can have some requirements for the process of 'development'. It is precisely this feature of the right to development that has made it a much debated and contentious right ever since its recognition in the 1970s.<sup>3</sup> The right to development is a multi-dimensional concept. There are many dimensions that can be studied to actually understand the right completely. The concept is something that constantly evolves with time because as the society changes so do the needs and requirements of a State and its people.

The right to development isn't about assistance, but empowering citizens of a country. The Declaration identifies hindrances in growth and advancement, empowers individuals and group of individuals, appeals for facilitating better environment and good governance at the global level, and boosts accountability of duty bearers - governments, donors and recipients, international organizations, transnational corporations, and civil society. The application of the right to development in India mainly reflects a legal argument for the protection of minorities rights, such as women's rights, Dalit rights, Adivasi rights, disabled people's rights in case of affirmative action in education, land acquisition and labor rights.

Now the quintessential question here is whether the citizens of India need a separate provision under part III i.e. Fundamental Rights of Indian constitution making the right to development as justiciable right, the main reason behind this query is that there are already various provisions stating the rights of citizens which cover development in various aspects. As mentioned above the ambit of right to development is a very wide and vague and including it as a separate provision is quit a challenging task.

### MEANING OF DEVELOPMENT AND RIGHT TO DEVELOPMENT

Development is one such word which we come across on a daily basis. It's a concept covering both individual and groups. In other words, Development may refer to the growth of a country's economic, social, and political conditions. It means to improvise handling of an area's environmental and anthropological resources. In order to generate wealth and improve people's living standard.<sup>4</sup>

Development can be of different things to different groups of people, some relate it to the process of industrialization and the related aspects and some others see development as related to economic growth and the easy availability of certain "luxuries". Some relate it to 'progress' while some others relate it to 'improvement'. Hence, the perception of the term 'development' varies from person to person.

Right is the co-jural opposite of duty, it is something which a person can claim for protection and right to development is one such right which is available to people in the form of claim also there exist a duty to protect this right but protection to be taken from whom is a question. Carrillo Salcedo of Spain, in a series of lectures on international law of development at Valladolid University explained the right to development as "The right to development as a right of states and peoples must unavoidably be founded on the recognition of the right of every man to a free and worthy life in his community. Every human being has the right to live, which implies the right to aspire to an increasingly better existence"<sup>5</sup>.

The right to a full individual development which has made it possible to consider the right of development as an essential human right serves as a foundation of, and implies also, the right of peoples and underdeveloped nations to develop. Their progress is only justified as long as development serves to improve the economic, social and cultural level of every human person" The Declaration on the Right to Development, 1986 provides a definition for the right to development under Article 1, which means, the right to development is an inalienable human right by virtue of which every human person and all citizens are entitled to partake, contribute and relish economic, social, cultural and political development wherein all human rights and fundamental freedoms can be fully achieved.

According to Mohammed Bedjaoui, The Right to Development is a fundamental right, the precondition of liberty, progress, justice and creativity. It is the alpha and omega of human rights, the first and last human right, the beginning and the end, the means and, the goal of human rights; in short, it is the core right from which all the others stem. Arjun Sengupta, former United Nations Independent Expert on the Right to Development defines the rights as "the right to a process that expands the capabilities or freedom of individuals to improvise their welfare and to fulfill what they value. The right to development is therefore

<sup>3</sup>Anjali Prabhakaran, realization of the right to development through the right to education, 2014 GJLS Vol. II, No. 2

<sup>4</sup> Anjali Prabhakaran, realization of the right to development through the right to education, 2014 GJLS Vol. II, No. 2

<sup>5</sup>K.L. Dalal, Man's right to development, India International Centre Quarterly, Vol. 15, No. 2 (SUMMER 1988), 31-07-2018

seen as an inalienable human right which is a right which is participatory in nature, i.e., it requires the participation of all people in all activities.<sup>6</sup>

## DEVELOPMENT AS FUNDAMENTAL RIGHT IN AFRICA AND INDIA

### AFRICA

Vienna declaration reaffirmed the right to development by the program of action (Vienna Declaration) which was adopted by 117 countries participating in the world conference on Human Rights in 1993, as a worldwide and absolute right and a vital part of basic human rights. The African Charter on Human and People's Rights (African Charter), adopted in 1981, in article 22 expressly incorporates this right. There are numeral reasons why the relationship between development and human rights is critical, and, therefore, why a human rights-based approach to development is essential – particularly in Africa. Such an approach, according to Kofi Annan, “empowers people to demand justice as a right, not as a charity, and gives communities a moral basis from which to claim international assistance where needed” (UN Annual Report 1998). It may well be argued that for African communities to claim or demand such international assistance, they ought to meet internationally-accepted norms of human rights and democratic values – that will ensure that such assistance is properly utilized to the benefit of the communities concerned. Furthermore, human rights form an important component of good governance and democratization. Since good governance and democracy are integral prerequisites for sustainable development, human rights protection inevitably becomes part of the equation.<sup>7</sup>

In the context of Africa, it is important to note that the African Charter on Human and People's Rights is the only regional/ continental human rights instrument that incorporates the right to development. According to paper 22 of the Charter, firstly every citizen of the country shall be ensured their right to economic, social and cultural development with regard to their freedom and identity and equal enjoyment of the common inheritance of mankind. Secondly, States shall be duty bound, either individually or collectively, to ensure the implementation of the right to development.

What this implies is that, not only is development a human right – but the full attainment of human rights requires the support of economic, social and cultural development. It also implies that such development is the basis for the realization of all human rights. It is against that background that the current approaches of integrating human rights in development in Africa are now highlighted.<sup>8</sup>

### INDIA

The application of the right to development in India mainly reflects a legal argument for the protection of minority rights, such as women's rights, Dalit rights, Adivasi/ tribal rights, differently abled people's right in case of affirmative action in education, land acquisition, and labor rights. For instance, in a judgment on the constitutionality of customary law in Bihar in 1996, which had until then excluded tribal women from the inheritance of property, the right to development was used to contend for amending the discriminatory law to guarantee that women have a dynamic role in the development process. Apt economic and social developments should be carried out with a view to eliminating all social inequality. (Madhu kishwar v state of Bihar).<sup>9</sup> The jurisdiction of right to development is mainly judicial review based in India. Reliant upon judge's interpretation has a distinct occurrence of judicial activism.

In India, rights have occupied a very special place within the Constitution, which guarantees certain 'Fundamental Rights' to all the citizens under Part III. Ever since the Constitution of India came into force, many important rights that are necessary for the comfortable living of the people has been guaranteed to them by the law of the land. These Fundamental Rights are justiciable in nature, hence making them all the more effective. Under Part IV of the Constitution of India, there are the Directive Principles of State Policy which act as guidelines to the State machinery and place responsibility on the State to take progressive action in certain directions in order to help promote the welfare of the citizens. Even though the Directive Principles are not justiciable, they are as important as the Fundamental Rights and now many of the

<sup>6</sup> Anjali Prabhakaran, realization of the right to development through the right to education, 2014 GJLS Vol. II, No. 2

<sup>7</sup> Mesenbet Assefa Tadeg, Reflection on the right to Development: Challenge and prospects  
<http://www.ahrlj.up.ac.za/tadeg-m-a>

<sup>8</sup> Rebecca Browning, Right to development in Africa: An emerging jurisprudence? Aug 2011,  
<http://kenyalaw.org/kl/index.php?id=1900>

<sup>9</sup> <https://voelkerrechtsblog.org/juridification-of-the-right-to-development-in-india/>

Directive Principles are finding legal backing and support under the extended view of Article 21 through the active role played by the Judiciary.

The right to development cannot be said to be a single right but it is an amalgamation of a number of important rights that are necessary for the all round development of an individual. In India, not much has been done for the realization of the right to development even though India is an official signatory to the United Nations Declaration of the Right to Development, 1986. Many elements of development have been given due regard but any specific measure taken towards the right to development have been limited. There is a need to develop specific rules to further develop this right in India.

There are many important parameters of development that are contained under Chapter IV of the Constitution such as the right to work, just and humane conditions of work and maternity relief, early childhood care, right to education, the duty of the State to raise the level of nutrition etc. These provisions have put to life by the Judiciary by interpreting these provisions within the ambit of Article 21. Now, the provisions have gained force and momentum as they have been interpreted as being a part of the 'right to life'. The Supreme Court has taken the view that in order to treat a right as a Fundamental Right, it is not necessary that it should be expressly stated as a Fundamental Right. Accordingly, the Supreme Court has implied a whole bundle of human rights out of Article 21 by reading the same along with some Directive Principles. Also, in certain cases, another way adopted by the Supreme Court with a view to expand the ambit of Article 21 and to imply certain rights therefrom, has been to interpret Article 21 along with international charters on human rights.<sup>17</sup> Article 21 since the past few years has assumed a "highly activist magnitude".<sup>18</sup> Justice Krishna Iyer has characterised Article 21 as "the procedural Magna Carta protective of life and liberty."<sup>10</sup>

In the case of *N.D. Jayal v Union of India* the Supreme Court opined that "[...] the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to the environment is a fundamental right. On the other hand, the right to development is also one. It is to be treated as an integral part of "life" under Article 21."<sup>11</sup>

## CONCLUSION

After conceptually analyzing Right to Development, seeing it with the fundamental point of view and comparing it with that of African charter which provides right to development as a fundamental right it can be said that that right to development is a very vast and heterogeneous subject and to achieve that the suggestions are:

1. In a developing nation like India, for the true realization of the Right to Development, the rights need prioritization. Basic rights should be given priority and attempts should be made to achieve complete success with regard to those rights. The process of the Right to Development should be one that needs to go step by step. The process should be gradual. An individual or a nation cannot develop over night, the process has to be a gradual one so that all rights are ensured to all.
2. Right to development can always be included in fundamental rights with separate provision though the provisions mentioned in part III covers many aspects of the right to development but as mentioned above that it has a very broad ambit it can properly be achieved if it all together has a separate provision under part III of the constitution.

<sup>10</sup> M.P. Jain, "Indian Constitutional Law" 1120 (Wadhwa and Company, Nagpur, 5th edn., 2008)

<sup>11</sup> Arjaya B. Majumdar, environment and wild life law in India