

Archeology of Human Rights Jurisprudence and Contemporary Challenges before the Right to Development: Recovering the Lost Promises



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Abstract

Development as a discourse has got multiplicity of meanings and it has been articulated differently in different historical times, as the histories of suffering people everywhere. Same happens to be the narratives of human rights and it does not carry any monolithic unity in meaning and scope, it has (had) been changing with passage of time and within and beyond historical trajectory. The scope of this research paper is only focused to a limited dimension of themes of Human Rights and Right to Development. However, this research paper also takes in to account some theoretical and conceptual interlinkages those emerge from interdisciplinary perspectives and inform the discourse of human rights jurisprudence and right to development and connected issues have been touched upon.

The aim of the author is to examine and explore that how the human rights and right to development are connected with each other for the full realization of the goal relating to human rights. The author also intends to examine through this paper that what kind role is being played by the UN for the implementation of right to development. The aim of the present paper also includes to analyse the impact of globalisation on the human rights and human development.

Keywords: Right to Development, Human Rights.

Introduction

While explaining the conceptual questions one finds that how Human Resource, Development and issue of basic need are connected with each other and how they impact and create a body knowledge and offer explanatory and descriptive accounts of rights based debates and its deeply embedded consequences for the right to development and its empirical dimension and possibility of realization in every-day-life of human individuals.

The issue has risen that the failure of the economic and social system to achieve a basic minimum condition of life for hundreds of millions of people in third world has lead to a widespread recognition of the need to give primacy for securing universal access to basic social and economic goods and services. It has been emphasized on the fulfillment of at least the 'basic needs' of the people and how initially this question of basic need was associated with the question of Human Right and Right to Development. On close readings of policy documents and declarations on these themes enables us to critically examine the challenges and possibilities in the backdrop of human rights and how these claims should not be a concern and mater of rhetoric and polemics rather it must be addressed from egalitarian and socio-economic perspectives, and over here civil society and non-state actors play an important and significant role in realizing these afore stated goals of bare minimum human rights to each and every individual and community in the deprived third world countries.

It important to analyse that how the debate regarding human right moves from first generation of human right (where more importance was given to civil and political rights) to second and third generation of human right where social, economic and group rights are given importance. And in the process of moving from first generation to third generation of human right reflects the paradigm shift in the changing debates and politics

of human rights and question of right to development and its interface with human rights is one of such question of shifting paradigms of human rights and right to development.

In this shifting paradigm, several questions are being raised not only with regard to the traditional approach regarding the human rights but also regarding the traditional approach regarding the notions of 'Development'. These traditional approaches were questioned where the economic growth was reflected as a maker of development. Through these questions and interventions a radically new idea of 'Development' came for the discussion where it was the social development/Human development (all debates regarding the human development report/human development index) now set the parameter of development and the development is no more measured only in terms of economic growth, construction of infrastructure, expansion of industry and increased production, consumption of goods and services rather basic grammar of human rights has witnessed change in contemporary debates.

Review of Literature

The concept of right to development has always been a bone of contention among the nation on the various forums of international bodies. Karin Arts and Atanbongawung(2016) in their article "the right to development in international law : new momentum thirty years down the lane" has highlighted this problem. In his article he raises the question that whether there is a possible new momentum for the RTD in international law. The article also mentions about the deep divide between the developing and developed nations on the issue. The article also throws light on the revitalization and actual realization of the goal of right to development.

The importance of continuous growth of the idea of international law has been explored by Hurst Hannum(2016) in the article "Reinvigorating Human Rights for the Twenty-First Century". The article examines the significance of human rights jurisprudence and its growth at international level. The article also emphasizes to make a distinction between law and moral precepts.

Khulekani Moyo(2017) in his article "An analysis of the impact of corruption on the realisation of the right to development" highlights the relationship between the right to development and corruption. The author indicates that how the evil of corruption is a big hindrance in the realization of the right to development as well as human rights. The article very emphatically contemplates that the corruption is not only a hindrance but it is itself a violation of human rights.

Convergence of the Idea of Human Rights and Right To Development

One finds that the idea of human rights and right to development converged at many critical points which is very much reflected in efforts of convergence of the idea of human right and development and by late 70's it has been one of the most important agendas in any human right discourse. This very idea of convergence of Human

Right and Human Development suggest that how integration of concepts of 'Human Rights' into 'Human Development' can enhance the value of each other in a constructive manner. And interestingly enough, these processes of convergence of human rights and in taking cognizance of human development is not only an abstract and philosophical exercise rather it goes into urgent need and necessities of human rights thus it can be a claim(s) that construct the background of collectivity and normative ethical responsibility of state and promise to protect and safeguard rights in universal manner.

The integration of Human Development in to Human Rights is very helpful in quantification of progress made in Human Rights. And at same time it is important to note that it also lay emphasis that language of human development needs to invoke historical diversity in envisaging the possibility of human good otherwise it becomes merely an ethical imperative minus historical resources of society and its ways of articulating the notions of justice, equality and multiple senses of human rights.

It is very explicitly clear that development need a proper environment and today's democracy is considered as the best environment for the implementation of the right to development, because the notion of Right to Development seeks for participation of individuals and marginalized community and subalterns masses who are otherwise denied the possibility to be part of development processes and hence participatory democracy strengthens the scope of right to development and making more inclusive rather than exclusionary process. However, no one can with certainty claim that participatory democracy is sufficient in enhancing the scope of right to development rather it's only a necessary framework to include the excluded marginal citizens.

The Entry of the Idea of Right to Development in the United Nations

The concept of Right to Development before taking its present shape and crystallizing as one the integral part of human rights discourse it has its own genealogy and its historical matrix. And how the Declaration on Right to Development was finally passed by the general assembly of United Nations is itself imbibe many layers stories of struggles by the crusader of this idea. The right to development came into existence as an assertion of developing countries and their struggle for a new international economic order (NIEO). The right to development could get the recognition in UN only after the long and consistent struggle by the developing nations. This concept enters in to the UN in 1986 in the form of a declaration but the attitude of various countries towards the very foundational understanding of development were quiet indifferent and discouraging, especially of developed nations

Some point of reference emerged from that how this declaration have been taken by various quarters. Some sees it as a new kind of Human Rights, while other declares it a sum of already existing human rights. Some believes that by Declaration on Right to Development the unity of

Human Rights was achieved which was lost during cold war and unity of human Rights was lost somewhere between the preference between civil and political rights in the one hand while socio economic and cultural rights on the other. While other says it's not a right at all. Though, in making of these prophetic claims they are in denial mode and try to critique abstract reasoning about human rights. One needs to explore the possibility and historical necessities of right to development so that the fruits of development may reach to the last persons who constitute the bottom of society; this is being equally emphasized by John Rawls in Theory of Justice as minimalist conception of justice.

By examining the Declaration on Right to development it comes out that Declaration on right to development claims that Human person is the centre of development and should be active participant and beneficiary of the right to development. The declaration on right to development is a very small document consisting of just ten articles but at the same time it covers issues like promotion and protection of human Rights, individual and collective responsibility for development, international co-operation for just political order, participation of people in development.

Legal Enforceability of Right to Development: A Thorny Issue

At the same time, the jurisprudential questions in this context of claims of "The Right to Development" as a legal entitlement is that in case if right to development is considered as enforceable rights, nationally and internationally then who is the right holders and against whom these rights will be enforced. Since, it emerged from the declaration on right to development that it refers "peoples" as right bearers while state is considered to be main entity upon whom the duty has been imposed. But there is another angle of the declaration where the developing nations asserts their right to development against the developed countries and this becomes the bone of contention and contestation. It has been observed that connections between real-politics and interests group play an important role in determining the constitutive and regulative rules of game in understanding the deeper aspects of politics and aspirations for the claims regarding (RTD), that the international institutions, as well as developed and developing countries have their positions and positionality regarding the declaration on the right to development according to their convenience and politics. As it is very apparent from this rift and closure readings that it is not only confined between developed and developing countries but international organization like World Bank and IMF have also their positions regarding the declaration.

From these different positions of developed and developing country as well as international organizations various kind of controversies also emerged regarding the Declarations on the Right to development, for instance, mainly two questions were raised regarding in its enforceability and justiciability. The nonbinding nature of the declaration, on the right to development is the most potent argument against

the declaration as its claim of true international law. However, it important to note that if the weight of a law is measured only in the light of enforceability there is always an apprehension of losing the holistic vision of actual aim in long term. A piece of legislation is not always about the binding or imposing something on someone but it is also about putting a bench mark or setting some common or sometimes some universal standard for the society. Today one of the most celebrated piece of law in the history of human rights is the Universal Declaration of human rights sets forth a common standard of achievement although it does not intend to put forth any mandatory legal commitments. At the same time lots of misconceptions are also there regarding the declaration. There are fears like that the issue of development will take priority over the respect for human rights, however it is pertinent to mention here that the protagonist of the right to development consider that development is very much part of human rights so there is no question of setting the priority of development over human rights. There are some question like if the right to development is right of developing country against developed countries then in that case whether the developed country should give the preference to own domestic needs or the demands of the developing nations.

When the very philosophical foundation of 'Right to development' is surrounded by above mentioned controversies then it is obvious that the question will be raised regarding its implementation and enforcement mechanism. Here it would be pertinent to mention that in this direction an open ended working group was established and the Independent Expert (Arjun Sengupta) on the Right to Development was appointed by the United Nation to find a way for implementing the right to development. The Independent Expert had recommended a 'Development Compact' between specific developing country and the international community as well as international financial institutions as a mechanism for the implementation for right to development. The Independent Expert recommends focusing on the realization of three basic rights; Right to Food, Education and Health which can be seen as constituting core elements in the realization of the Right to Development.

The discourse of development and the manner in which it creates centers of marginalized individual who are denied the basic dignity in a uneven development project, thus there was an urgent need to restore this lost dignity, this recovery was (is) possible only through re-articulations of aspirations of being human and this can be done only by paying attention and addressing to the questions and concerns of right to development. Though, it is a matter of contention, whether, it should emerge from human rights declarations or it must be other way around, that is fore-grounding this narrative from the perspective of democracy and political struggles around the processes of development discourse itself.

Right to Development and Globalisation

Another distinctive aspect of this debate is the contours of right to development and its

interlinkages between economic globalisation and Right to development, simultaneously it shows the ideological character of globalisation and how it created the possibilities and discontents about right to development. Another factor which has engulfed the right to development is economic globalization. In this era of economic globalization 'The Right to Development' of people as well as nations (developing/underdeveloped) has effected in various ways. Globalisation has become part of all aspect of human life and economic globalization essentially emerged from integration of global markets which is not only determining the economic questions in social life but it equally interfere in the realms of social, political, cultural values of life and mould them on the terms and condition which suits the global markets. No doubt in this process of economic globalization those who (nations or individual) are on the periphery always on the receiving ends in this process. However, the globalization is a process that carries possibilities and threats alike. Possibilities, because it should not be forgotten that the broadening of international markets which promises the so called growth / development. The argument of protagonist is that the integration of global market will ultimately lead to a just economic system the benefits of which ultimately will percolate down to the people on the periphery in the society. But it must be underlined that economic globalization also entails threats and risks. It also fuels the various phenomenons of exclusions. In this process the state is sidelined and there is no question of intervention by the state in the name of 'welfare state'. The logic of market operates on the principle of exclusion that is one who can pay will get the service and others will be excluded from the market.

Globalisation Induced Development and Shrinking Space for Welfare State

Another major sign of shrinking role of welfare state is reflected in terms of growing influence of transnational corporations which have grabbed an undue share in the determination of policy decision at national as well as international domain. Their influence can be judged from the fact that the nation states are not only facilitating them but in many areas related to policy matters they take their 'seal of approval'. The Transnational corporations are involved in human rights violations in various parts of the world either directly or with the help of local agencies, sometimes even with the help of local government. All this above instances are indicators that how in the era of economic globalization the right to development of indigenous people as well as under develop/ developing states are not only affected but also determined by an outside agency. This very process reflects that how the indigenous people are not allowed to participate in the process of development rather they are driven and dominated by the notion of development which suits the transnational corporation. This is a clear cut violation of idea of participation which is one of the core principles of the right to development.

This impact of globalization is also reflected on various components of the right to development.

The basic rights like right to food, education and health which are considered to be indispensable components of the right to development have also been affected by this process as never before. For instance, it has worsened the situation regarding food availability to those who cannot afford the price for it. Food exports have led to declining food security in poor exporting nation. A large part of agricultural land has been converted into malls, units of tourism industries and other signature tunes of so called development and modernization. This change of land use erodes the capability of food production. Globalization as an ideology has rapid influence on agriculture by destroying the possibility of agricultural labour and by taking away land from farmers and alluring them for profit and making them pauper. Recent violent clashes between farmers and government machinery is good enough to show how this process is supported by market and industry on the one hand and people resistance movement on the other.

Likewise education in 21st century has adversely affected in wake of privatization and policy and turning of education into a profit generating enterprises in the developing countries, it has even suffered a lot because of budgetary cuts. Similarly in case of right to health, there is increasing evidence that globalization itself will lead to greater levels of disease that is preventable and avoidable. For example the reports suggest that 90% of malaria deaths are caused by colonization of rain forest and construction of large open water schemes, both of which increase human exposure to disease carrying mosquitoes. It was observed that how the developmental work in New Delhi during Common Wealth Games in 2010 was responsible for various kinds of water borne diseases. It was alleged that the health of poor people was most affected from the above mentioned development projects.

Even India is not untouched by this global phenomenon and in last two decades it has adopted a model of development which seems to protect and promote the interests of big houses. The controversial policy regarding special economic zone is one of such example where good bye has been said to the welfare legislations for the labours. The acquisition of lands for Information technology parks etc. has done irreparable harm to the people for whom their land is primary source of livelihood. It is to be noted that the impact of economic globalization on social, economic, cultural and political aspects of life is very much visible in any society which is opened to and connected with global market. It is in this background it has to be seen that how the right to development has been denied to the people and especially the indigenous people in this whole process but at the same time it has been explored that how this very concept of right to development can give strength to the peoples movement and their resistance to this unjust and inequitable process of economic globalization.

Conclusion

The whole debate regarding the human rights and right to development has to be examine by

having a comprehensive vision where human itself has to be considered as centre of any idea with regard to development. At every level from bottom to top be it framing of the policy at regional level or at the international bodies has to be human centric. Any policy of development which ignores the human rights aspects cannot be called development in true sense. At same time a human rights regime which ignores and don't ultimately lead to development is also not acceptable in the interest of human civilization. The UN declaration on the right to development is although declaratory in nature but it sets the tone of future debates regarding the human rights. A time has come in the human civilization were it can no more afford to take issues of human right and human development separately. By ignoring the one or giving the preference to one over the other, the human race will lose its focus to make this earth a better place for all human being. A vow that was taken by the world community when it witnessed the devastation in the Second World War. A promise which was given to whole human race in the form of UN charter and universal declaration on human rights, a time has come to recover those lost promises by integrating the idea of human development with human rights.

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