

Analyzing and Understanding the Salient Features Right to Development

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Abstract – The “Right to Development” is an inalienable human right by virtue of which everyone is entitled to participate in, contribute to and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realised”, it undoubtedly includes rights to accomplishment of basic needs as one of the inherent facet of the right to development, an indispensable component of the enjoyment of economic and social development. However, in several ways the right to development goes further than what the majority would define as realization of basic needs. In many sense it extends to cultural and political development, which is usually not included in the basic needs approach. The Right to Development additionally entails lively accomplishments, i.e., to raise living standards with the passage of time, whereas the basic needs approach is principally concerned with granting certain standards to each one at earliest point of time, and less concerned with growth over time. Moreover, economic development is an attribute of a society as a whole, while basic needs fulfillment and rights concern rights of individuals within society. These distinctions can be over- drawn, since a dynamic version of basic needs must include, as one can see, improving standards over time, while there is interdependence between individuals' fulfillment of basic needs and what is happening to society as a whole. Through this article researcher intends to examine the contents and nature of “Declaration on Right to development, 1986” by the United Nations.

Key Words: Right to Development, Human Rights

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(A) STIPULATING THE CONTENTS OF THE RIGHT TO DEVELOPMENT: EXAMINING THE SURFACE AND DEEP PROPOSITIONS

To discover the contents of the Right to Development one has to really dive deep into the text of this declaration, which is very short and snappy on paper nevertheless, it hides in it very deep meanings which can be of far reaching consequences. It is over and over again blamed that even though central theme of the Right to Development is moderately precise, the Declaration on the Right to Development is not a very clear document, and as a consequence, the content of the Right to Development has been interpreted in numerous ways. Subsequent to scrutinizing the Declaration on the RTD the following components come into view which signifies the core component of the RTD:

(a.1) Human Person is the Centre of Development - The human person is the central subject of development and should be the active participant and beneficiary of the right to development.³³

(a.2) Promotion and Protection of Human Rights - States shall take staunch steps to eradicate the immense and brazen violations of the human rights of people and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, threats against national autonomy, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self determination.³⁴ All States should co-operate for upholding and augmentation of worldwide reverence of all human rights for all without any distinction as to race, sex, language or religion.³⁵ All human rights and fundamental freedoms are indivisible and interdependent. States ought to make efforts to abolish obstacles to development by giving equal importance to civil and political rights, as well as economic, social and cultural rights by bridging the gap between the two different aspects of development.³⁶ At the same

³³ Article 2(1) of Declaration on the Right to Development, 1986.

³⁴ Article 5 of Declaration on the Right to Development, 1986.

³⁵ Article of 6(1) of Declaration on the Right to Development, 1986.

³⁶ Article of 6(2) of Declaration on the Right to Development, 1986.

time States should also remove any kind of impediment to economic, social and cultural rights.³⁷ This is consistent with the general affirmation of the equal status to be given to all human rights at the 1993 Vienna World Conference on Human Rights, which followed the end of the cold war.

(a.3) Individual and Collective Responsibility for Development - All human beings have a accountability for development, individually as well as mutually, looking into the circumstances the need for full respect for their human rights and fundamental freedoms all are also bound by their duties towards the society, this alone can be a way forward in the service of humanity and human rights. And every one should therefore promote and protect an appropriate political, social and economic order for development.³⁸ Above observation remains intact irrespective of the fact that the States have the primary accountability for the ensuring of national and international environment which is congenial to RTD.³⁹

(a.4) International Co-operation for just Political Order - unrelenting efforts are needed for quick development of developing and underdeveloped nations. This cannot be done without effective international co-operation by providing these States with suitable means and facilities to cultivate their wide-ranging development.⁴⁰ And member country should promote and protect an appropriate political, social and economic order for development.⁴¹ The realisation of the RTD ensures full respect for the principles of international law concerning friendly relations and co-operation among States.⁴² States should become conscious their rights and should be committed to their duties in such a way as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, which is not adverse of furtherance of human rights to development.⁴³

(a.5) Ensuring Participation of people in development - States have the right as well as under the duty to devise suitable national development policies that aspires at the steady enhancement of the well-being of the whole community as well as all persons living in their territory, on the basis of their active, free and meaningful participation in

development.⁴⁴ States should support popular participation in all aspects of national life as an essential feature in development and in the full realization of all human rights.⁴⁵

(a.6) Social Justice - States ought to carry out, at the national level, all important measures for the achieving of RTD by making sure equality of opportunity for all in their access to basic necessities such as , education, health services, food, housing etc. Concrete measures must carry out to guarantee that women have an active role in the development process. States must revisit their economic and social policy by making suitable changes to wipe out all social injustices.⁴⁶

(a.7) International Peace and Security - All States should promote the establishment, maintenance and strengthening of international peace and security. For achieving this objective states should follow and adhere to policy of disarmament under effective international control, at the same time it should also be guaranteed that the resources diverted are utilized for comprehensive development, especially for protecting the need of the developing countries.⁴⁷

(a.8) Self Determination - The human right to development also entails the full realization of the right of peoples to self-determination. Which includes, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.⁴⁸ But at the time it should be kept in mind this not something absolute this right is subject to other international law and principles. that The provisions on self determination is not just to suggest to a reaffirmation of the independence and equality of nations, but so as to consolidate the rights of persons belonging to minorities and indigenous groups to determine for themselves. Self-determination here means that, as a minimum, minorities must enjoy the right to participate in the design and implementation of a genuine sustainable development policy.⁴⁹

³⁷ Article of 6(3) of Declaration on the Right to Development, 1986.

³⁸ Article 2(2) of Declaration on the Right to Development, 1986.

³⁹ Article 3(1) of Declaration on the Right to Development, 1986.

⁴⁰ Article4(1) of Declaration on the Right to Development, 1986.

⁴¹ Article 2(2) of Declaration on the Right to Development, 1986.

⁴² Article3(2) of Declaration on the Right to Development, 1986.

⁴³ Article3(3) of Declaration on the Right to Development, 1986.

⁴⁴ Article 2(3) of Declaration on the Right to Development, 1986.

⁴⁵ Article 8(2) of Declaration on the Right to Development, 1986.

⁴⁶ Article 8(1) of Declaration on the Right to Development, 1986.

⁴⁷ Article 7 of Declaration on the Right to Development, 1986.

⁴⁸ Article 1(2) of Declaration on the Right to Development, 1986.

⁴⁹ Laure-Hélène Piron, 'Right to Development: A Review of the Current State of the Debate for the Department for International Development' at 11, 2002, available at <http://www.odi.org.uk/resources/download/1562.pdf> accessed on 28.08.2009.

(B) THE NATURE OF THE RIGHT TO DEVELOPMENT: DESCRIPTIONS AND INTERPRETATION

Although Right to Development has been accepted as one of the inalienable human right in the Declaration on the Right to Development, and avowed so again at the Vienna World Conference and since then it is part and parcel of the international human right schema. However, even today some of the challenges which are being faced from various quarters are what type of right is it? Who are the duty-holders and rights-bearers? Whether Right to Development is a human right? What are the consequences if it is accepted as one of the human rights? How can it be implemented, monitored, and enforced? Is it a new and separate "third generation right"? How does it interface with other rights? On the basis of the above questions the present debate of Right to Development hovers around the following assertions:

- Merely a sum of previously existing rights to say the aggregate of civil, political, economic, social and cultural rights;
- An instrument to converge and put development in the centre of human rights framework and the human in the centre of development;
- Using as tool to realise the human rights of people affected by the development processes and it emphasizes on the right to a particular process of development;
- A new third generation right formulating new obligation, against developed countries in the form of Overseas Development Assistance ;giving international cooperation an already recognised principle of international law to new altitude or
- A new facet of the concept of sovereignty and right to self-determination from economic point of view.

Recalling and mindful of the above challenges and assertions one aspect is explicit that main focus of the debate is emerging in the form of 'rights' discourse. To entitle any idea with the term 'right', the jurisprudence requires certain preconditions to be satisfied, considering these preconditions it will be pertinent to clarify and examine the following aspects of Right to Development:

(b.1) Who are Right-holders - long-established Principle to human rights law hold that individuals are the bearers of rights, who can make claims against the state for the promotion, protection, and fulfillment of the obligations or duties contained in the right and owed by the duty holder. The Right to Development

promotes "people-centered development" and under various analyses⁵⁰ makes individuals holders of the right to development.⁵¹ However, the Declaration on the Right to Development also refers to "peoples" as right-bearers.⁵² This was the main emphasis in the preparatory debates for the Declaration on the Right to Development. The state is not explicitly mentioned as the subject of the Right to Development. The Declaration on the Right to Development can however be interpreted as introducing the notion in Article 2 (3) that states are also right-holders, for example, that they have the right to formulate appropriate national development policies. Under international human rights law claims are held against states; this interpretation would imply that states can have human rights claims against other states, and possibly against the international community.⁵³ This interpretation which is defended by some academics and developing states goes against the traditional approach whereby human rights obligations are held by states towards their own populations.

(b.2) Who are duty-holders - The Declaration on the Right to Development clearly holds that the primary duty-holder is the state,⁵⁴ but at the same time individual also has duties in the realisation of the Right to Development. The Declaration on the Right to Development provides for the active participation of an individual⁵⁵ and collectively as a member of a community.⁵⁶ According to the Declaration on the Right to Development, states have a duty of co-operation,⁵⁷ both individually and as members of the international community, to formulate international development policies.⁵⁸ This reflects international community's commitment under Article 55⁵⁹ and 56⁶⁰ of the

⁵⁰ See: Jack Donnelly, "In Search Of The Unicorn: The Jurisprudence of The Right To Development", *California Western International Law Journal*, Vol. 15, 473-509 (1985).

⁵¹ Article 2 of Declaration on the Right to Development.

⁵² Article 1 (1) of Declaration on the Right to Development.

⁵³ For example if the international community constrains the ability of states to develop national development policies.

⁵⁴ Article 2(3) and 3 of Declaration on the Right to Development, 1986.

⁵⁵ Article 2(1) of Declaration on the Right to Development, 1986.

⁵⁶ Article 2 (2) of Declaration on the Right to Development, 1986.

⁵⁷ Article 3(3) of Declaration on the Right to Development, 1986.

⁵⁸ Article 4(1) of Declaration on the Right to Development, 1986.

⁵⁹ With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and Universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

United Nations Charter, Article 2(1)⁶¹ of the International Covenant on Economic, Social and Cultural Rights and Article 28⁶² of the Universal Declaration of Human Rights.

(b.3) National Implementation - The Right to Development is therefore to be realised by states for their own people, through appropriate policies. How the right is to be implemented at the national level is not fully thought out. The Declaration on the Right to Development also offers little advice on how to priorities national resources in the realization of the right. The debate at the Commission on Human Rights now acknowledges the importance of good governance at the national level to facilitate the realization of the Right to Development. But there is little advice on how states can be held accountable by their own citizens for the realization of the Right to Development. And according to some academics, some developing states have no intention of implementing the right at the national level, and are only concerned with its usefulness to make claims at the international level.

(b.4) International Implementation - Moving to the realistic level, it is far from comprehension how such a commitment could be defined and realized. No one can be sure that what constitute the most conducive international environment? This is a controversial conception, which varies as definitions of development evolve. How can one attribute culpability for the failure to generate such an environment? How can an individual, or states, hold a claim against the international community? And how can individual states, through bilateral activities, or as members of international organizations, assess whether they are adequately meeting their duty of international co-operation and creating the most conducive international environment. The claim is also made that International Financial Institutions; in particular the World Bank, International Monetary Fund, and World Trade Organization, as key international development actors, have a role to play in the realisation of the Right to Development. Nevertheless it is not clear that how international organisations, which have not signed to international human rights instruments, can be held answerable for the realization of human rights.

(b.5) Enforcement and Monitoring Mechanisms - It is far from clear how the Right to Development is to

be realised through appropriate international and national policies. However, even if a consensus was reached on what such policies would entail, how would the beneficiaries -subject or object- of the Right to Development be able to enforce their rights, monitor the process of development, and hold the duty-holders to account?

(C) MAPPING THE POSITIONS OF INTERNATIONAL DEVELOPMENT ORGANIZATIONS: INSTITUTIONS AND POLITICS OF APPROPRIATION

After having a detailed discussion on the nature of the Right to Development it would be pertinent to explore the course of action where the Right to Development is debated, a survey of the proceedings, communiqués and statements of United Nations and other international summits divulges that the Right to Development is predominantly deliberated and referred to in United Nations platforms. The above mentioned point of view can be substantiated by the facts that the Declaration on the Right to Development passed in United Nations General Assembly. It is in the United Nations forum where the Right to Development is being recognized as human rights and is in the course of being crystallized and conceptualized. There is significant presence of developing nation in the United Nations where they have greater say in General Assembly and third world countries can have an edge over the developed nations. It would be pertinent to have an overview where Right to Development was deliberated upon in the various United Nations forums, such as;

- Annual General Assembly debates in New York (at the Third Committee);
- Annual meetings of the Commission on Human Rights (Commission on Human Rights) in Geneva; annual 5 to 10 days meetings of the Open-Ended Working Group on the RTD and discussion of the reports of the Independent Expert on the Right to Development ;
- It is clearly affirmed in the directive of the Office of the United Nations High Commissioner for Human Rights; with the objective of promoting research a Right to Development Branch has been established.
- Other steps like appointment of Special Reporters on education, food, adequate housing and the Independent Experts on structural adjustment and foreign debt and on extreme poverty. Besides this the Right to Development has also found place in Treaty Bodies, especially in the Committee

⁶⁰ All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

⁶¹ Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

⁶² Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

on Economic, Social and Cultural Rights which also scrutinizes, international co-operation in relation to the implementation of economic, social and cultural rights. The Right to Development is also been given important places in other United Nations mechanisms, such as the World Conferences; United Nations Conference on Trade and Development, the least Developed Countries Conferences, and the Millennium Summit. In the light of the above mentioned development regarding the Right to Development it would be indispensable to investigate the positions taken by various governments and other international players.

(c.1) Developed Countries: Although most of the developed governments accept the Right to Development as a human right of individuals which also covers group rights but at no point of time they recognized it as right of states. Indeed they insist that the states have the primary responsibility for realizing the Right to Development. For this they emphasize that the states should focus on the good governance at the national level. From the point of view of international dimension the governments of the developed countries believe that the Right to Development does not comprise of any commitment to offer developmental assistance, at the same time this fact is stressed that one state has right against another states in the name of development. Northern governments have always been of the opinion that the international dimension of Right to Development should be deliberated on the development. It would be more appropriate to discuss the international dimension of the Right to Development in development forums. keeping in mind the reluctance on the part of the developed countries, they contest the very idea on the ground that it is still not mature to develop a consensus on the Right to Development and it is a far distant dream to discuss about the permanent follow up mechanism.

(c.2) Developing Countries: Like most of the other international issues there is difference of perspectives between developed and developing nations on the Right to Development too. Especially the leaders from the Non Aligned Movement countries along with China have been the flag bearers for the Right to Development. And it was asserted that the Right to Development is a right of the states and a collective right of the peoples to development, and the international community is under obligation to share the responsibility for the development. Accountability for the realisation of the Right to Development can't be just restricted to national government or domestic policies but today, even globalisation, international trade, international economic policies, foreign debt and intellectual property regimes also effect the national development to the highest degree. Recalling the above arguments the developing world press for

effective participation by developing countries in international economic order where development needs of all nations are fulfilled. It visualizes an entirely different international financial structural design in which doors and windows are open for even third world countries. That structural redesign must provide for a full proof management for restraint and response to cope up with international financial crisis. According to developing nations the occasion has arisen for discussing the permanent follow-up mechanisms and some of them are pressing a Convention, or for the time being a mechanism to monitor the implementation of the Right to Development worldwide.

Development organizations are generally not active participants in debate relating to the Right to Development indeed it is considered to be a privilege of states. However, the United Nations has been extending invitation to attend the Open Ended Working Group and to express their views on the convergence or non convergence of human rights concerns into their developmental agenda. The Office of the High Commissioner on Human Rights has a unique task for mainstreaming human rights transversely under the United Nations system. It is suppose to track and appraise the progress made in the realization and execution of the Right to Development. At the same time it is also the responsibility of the Office of the High Commissioner on Human Rights on Human Rights to submit annual reports to the General Assembly or Commission on Human Rights and interim reports to the Open Ended Working Group. Among the United Nations agencies the United Nations Development Programme has taken an edge in developing a rights-based approach to development in fact its role in giving direction to the Right to Development discourse is innumerable and invaluable.

(c.3) The World Bank – the World Bank vision regarding Right to Development and human rights seems to have changed in last few years. With the passage of time and with its constant interactions with Office of the High Commissioner on Human Rights and Non Governmental Organisations working in the area of human rights, the World Bank has changed its hesitant approach which is reflected in various policies adopted by the word bank especially after.⁶³

(c.4) The International Monetary Fund - Unlike World Bank the International Monetary Fund does not consider itself bind by an international obligation to promote and protect human rights. At the same time this fact has to be remembered that

⁶³ See: Development and Human Rights: The Role of the World Bank as available at http://www.fao.org/righttofood/kc/downloads/vl/docs/HR%20and%20development_the%20role%20of%20the%20WB.pdf as accessed on 17.12.2010.

even the International Covenant on Economic Social and Cultural Rights is not binding on International Monetary Fund. In fact it emphasizes on promoting macroeconomic stability and poverty reduction strategies by keeping the pre conditions for the realization of economic, social and cultural rights while providing financial assistance.

(c.5) World Trade Organization - Today, World Trade Organisation is playing an important role in international economic order and any debate regarding Right to Development without referring to World Trade Organisation is not complete. Although it has contributed in this debate but its position on human rights is vague. As World Trade Organisation deals with the liberalization it provides preferential treatment for developing countries. It also recognizes the obligation to liberalise in favour of developing countries and developed states are supposed to contribute for this.⁶⁴ Many Other international organisations⁶⁵ also participated in Right to Development debates.

(c.6) Non- Governmental Organizations: Due to ambiguity and the nature of the politics behind the debate, comparatively less number of Non Governmental Organisations are vigorously concerned with the Right to Development debate. One of such Non Governmental Organisation Franciscans International is based in Geneva and Rights and Humanity, in UK are trying to smooth the progress of the inter-governmental discussions. Another Non Governmental Organisation which has gained some identity as development oriented Non Governmental Organisation is Oxfam. It is using a rights-based approach and cautiously engaging in the Right to Development debate. Oxfam is contextualizing it as a helpful opening point on the responsibility of non-state actors for development. However, interestingly enough the majority development Non Governmental Organisations appear to choose to crusade for a particular right. Organizations like Amnesty International and Human Rights Watch have chosen to work in the sphere of economic and social rights, including on the role of transnational corporations while excluding the Right to Development from it. An investigation of Non Governmental Organisations objective statements during international development conferences disclose that barely any Non Governmental Organisations refer to the Right to Development. Nevertheless, at one point or the other, promotion

and protection of particular rights are talked about. In the context of the Financing for Development process, the Danish United Nations Association seems to be one of the few Non Governmental Organisations advocating for the integration of human rights and development based principles of the Right to Development.

International consensus on development simply looking at whether or not the Right to Development is mentioned in international statements may not reveal the full extent of its current relevance and one can't really assess whether or not it appears to have been influenced by the Right to Development debate, or at least corresponds to some of the principles of the Right to Development.⁶⁶

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⁶⁵ United Nations Conference on Trade & Development, Joint United Nations Programme on HIV/AIDS Food & Agricultural Organisation, United Nations Educational, Scientific & Cultural Organisation, United Nations Children's Fund, United Nations Population Fund, International Labour Organisation, and the International Office for Migration.

⁶⁶ *Supra* note 19 at 24.

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27. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and Universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
28. All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.
29. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
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