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A Critique of Right to Development

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Abstract

The United Nations adopted the resolution to declare Right to Development as an inalienable human right on 4 December 1986. The idea was reinforced in 1993 through the Vienna Declaration and Programme of Action. The Right to Development has always been a controversial issue as several developed countries have objected to the declaration of Right to Development on the pretext of (i) perceived defects of the very idea of development as a matter of right; (ii) being contrary to the concepts of economic liberties and entrepreneurship; and (iii) conceptual confusion pertaining to economic, social and cultural rights. On the other hand, the developing countries consider it obligatory on the part of developed countries to contribute whole-heartedly towards formation of new international economic order and they use the declaration as a means to demand a holistic transfer of resources in the form of foreign aid and liquidation of debts from the industrialized countries. This paper provides a critique of the Right to Development in the context of fast emerging global milieu where citizens of the world are concerned about inequity, poverty and environmental degradation.

Keywords: Right to Development, United Nations, Developing Countries

Introduction

United Nations General Assembly adopted Declaration on the Right to Development (RTD) in 1986. Article 1 of the Declaration sets out the broad intent of RTD: 'The right to development is an inalienable human right by virtue of which every human person and all peoples are 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 realized. Obviously, RTD integrates all the human rights and fundamental freedoms in a unique way where every right is indivisible and interdependent at the same time.

Development as such has been defined in the RTD declaration as 'a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. In view of such assertion, it is clear that development implies both the process as well as outcomes. Rights-based approach accounts for development not in terms of human

needs but in terms of responding to the rights of individuals and groups (Salomon & Sengupta, 2003).

RTD envisages the following in order to ensure that all the individuals and peoples on the earth enjoy fruits of development in an equitable manner:

- The human person is the central subject of development and should be the active participant and beneficiary of the right to development. (Article 2-1)
- All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development. (Article 2-2)
- States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom. (Article 2-3)
- States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development. (Article 3-1)
- The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations. (Article 3-2)
- States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights. (Article 3-3)
- States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development. (Article 4-1)
- Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development. (Article 4-2)
- States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples 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, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination. (Article 5)
- All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion. (Article 6-1)

- All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. (Article 6-2)
- States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights. (Article 6-3)
- All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries. (Article 7)
- States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices. (Article 8-1)
- States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights. (Article 8-2)
- All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole. (Article 9-1)
- Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights. (Article 9-2)
- Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels. (Article 10)

Indeed, RTD may be construed as the right to a particular process of development that allows the realization of economic, social, and cultural rights as well as civil and political rights and all fundamental freedoms by expanding the capabilities and choices of the individual, more so as entitlements rather than state munificence, charitable gesture of global aid agencies or intervention of international forums (Sengupta, 2000). RTD aims at self-actualization of people in the most dignified way possible while ensuring that no other rights of the human beings are violated or compromised in the process. Interestingly, RTD as such does not provide answers to all the human woes across the globe. Instead, it provides a holistic framework where development has been categorically recognized as a human right and individuals and peoples have been acknowledged as right-holders –as subjects and not as objects of development (Salomon & Sengupta, 2003).

Implications of RTD declaration are infinite. Capturing the spirit of the declaration, Sengupta (2002) observed: '...considerations of equity and justice would determine the whole structure of development. For example, poverty has to be reduced by empowering the poor and uplifting the poorest regions. The structure of production has to be adjusted to produce these outcomes through development policies. The aim of the policy should be to achieve this with minimum impact on the other objectives, such as the overall growth of output. But if there is a trade-off, such that growth will be less than the feasible maximum, that will have to be accepted in order to satisfy the concern for equity. This development process has to be participatory. The decisions will have to be taken with the full involvement of the beneficiaries, keeping in mind that if that involves a delay in the process, that delay should be minimized. If a group of destitute or deprived people has to have a minimum standard of well-being, a simple transfer of income through doles or subsidies may not be the right policy. They may actually have to be provided with the opportunity to work, or to be self-employed, which may require generating activities that a simple reliance on the market forces may not be able to ensure'.

Development Compact

Norwegian Foreign Minister, T. Stoltenberg pioneered the concept of Development Compact in 1980s. Noted Indian economist and an independent UN expert expounded the concept further in order to reinforce the implementation of RTD. Development compact envisages a mechanism to bring all the stakeholders together in an operational framework based on mutuality of obligations and shared responsibilities. Sengupta (2002) suggested that the international community must fulfill reciprocal obligation in case the developing countries undertake earnest steps to implement the provisions of the RTD.

The concept of Development Compact has elicited positive response from such international organizations as World Bank, International Monetary Fund, United Nations Conference on Trade & Development, International Labour Organization, United Nations Educational Scientific & Cultural Organization and United Nations Development Programme. The RTD declaration thus envisions a development paradigm based on stakeholder participation, non-discrimination and equity. By implication, a mechanism should be in place to ascertain the responsibility of the State vis-à-vis the provisions of the Declaration, accountability procedure should be transparent while monitoring procedure should have scope for participation of global actors. The Declaration also legitimizes people's insistence on adoption of appropriate development strategies that conform not only to the Articles of Right to Development but also the Universal Declaration of Human Rights.

However, the concept of Development Compact is imbued with certain limitations in view of contemporary political scenario. Nwauche & Nwobike (2005) have outlined some of the constraints that impair Development Compact:

- Most donor countries deploy development aid as a tool in their foreign policy. They use aid as a leverage to attain their foreign policy objectives.
- National development programmes may be funded by international agencies/supporting country only if such interventions meet the objectives of donor countries/agencies and international policy prescriptions.
- Linking international human rights obligations with national development programmes will invariably cause significant worries for developing countries which

may not like to open up their territories for inspection of external agencies in lieu of foreign aid.

- There is no accountability mechanism; hence an individual in a developing country cannot claim his/her right to development and entitlements.

Critique

One of the major criticisms of the RTD declaration is the imperfect nature of obligations. The Articles of the Declaration are at best a few policy commitments and not justifiable entitlements of the peoples of the world. The declaration is yet to be converted into a Treaty implying that the commitment of the nations to realize the Right to Development is not legally binding. An individual or an interest group cannot seek any relief from court of law in case the State fails to fulfill any of the commitments given in the Right to Development Declaration. Moreover, international bodies are also not legally bound to honour the commitments enshrined in the Right to Development Declaration. Not a single State in the world has formulated any law to safeguard the entitlements of the people in conformance with Declaration.

Another impediment in realizing the Right to Development is wide-scale disregard to the right of the people to self-determination and their innate right and sovereignty over natural resources. It is compounded by emergence of despotic rules in a number of countries and concentration of economic power in highly industrialized countries. Yet another are of concern is restrictive practices with regards to transfer of technology.

Implementation of the Articles of the Declaration is even more serious issue than enforceability. In absence of any international monitoring mechanism, most of the provisions of the Declaration bite dust in the State secretariats. Resource is another constraint that contribute towards obligation failure vis-à-vis Right to Development on the part of a great number of poor countries. Due to illiteracy and lower level of awareness, a large number of people do not come forward to fight for formulating laws that may guarantee certain entitlements commensurate with the provisions of the Declaration of Right to Development. However, civil society can certainly pressurize the State to create legal framework for implementation of the provisions of the Declaration of Right to Development through mass mobilization, advocacy and consistent campaign. Till such time comes, the Right to development would remain merely a policy paper

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