Right to Development as a Human Right

This paper seeks to examine some of the questions relating to the right of development as a human right, the nature of which is often open to conflicting interpretations. Further, it asks, does the existence of the right of development as a human right actually assist development and why has it been so difficult to secure a consensus among member states of the UN on such a vital issue? The author argues that the right to development is related to ideas of justice and equity, world over and is fundamentally different from conventional policies and programmes related to development.

Introduction

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. This Declaration came almost 38 years after the adoption of the Universal Declaration of Human Rights, according to which human rights constituted both civil and political rights (Articles 1 to 21) and economic, social and cultural rights (Articles 22 to 28). In fact, the Universal Declaration reflected the immediate post-war consensus about human rights based on what president Roosevelt described as four freedoms – including the freedom from want – which he wanted to be incorporated in an International Bill of Rights. There was no ambiguity at that time about political and economic rights being interrelated and interdependent components of human rights; or that “true individual freedom cannot exist without economic security and independence.”

The credit should rightfully go to Eleanor Roosevelt, who was the head of the US delegation during the drafting of the Universal Declaration, for having first identified and advocated for the right to development when she stated, “(W)e are writing a bill of rights for the world, and…one of the most important rights is the opportunity for development” [Johnson 1987:1].

The consensus over the unity of civil and political rights and economic, social, and cultural rights was broken in the 1950s, with the spread of the cold war. Two separate covenants, one covering the civil and political rights and another covering economic, social and cultural rights, were promulgated to give them the status of international treaties in the late 1960s, and both came into force in the late 1970s. It took many years of international deliberations and negotiation for the world community to get back to the original conception of integrated and indivisible human rights. The Declaration on the Right to Development was the result. However, the single dissenting vote by the US set back the process by several years during which the international community could have tried to translate such a right to development into a reality. Issues were raised about the foundational basis of this right, its legitimacy, justiciability, and coherence. The world was still divided between those who denied that economic, social, and cultural rights could be regarded as human rights, and those who considered that economic, social and cultural rights as not only fully justifiable human rights, but as essential human rights. Claims and counter claims continued to be made by both the groups in different forums.

Finally, a new consensus emerged in Vienna at the Second UN World Conference on Human Rights in 1993. The Declaration adopted there reaffirmed, “the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.”

This Declaration, which was supported by the US, went on to say, “Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of government”. It also committed the international community to the obligation of cooperation in order to realise these rights.

In effect the right to development emerged as a human right which integrated economic, social, and cultural rights with civil and political rights in the manner that was envisaged at the beginning of the post-second war human rights movement. The world got back, so to speak, to the mainstream of the human rights movement from which it was deflected for several years by cold war international politics.

In this paper, I would like to examine some of the questions relating to the right to development as a human right. The first question is about the nature of the right to development itself. Although the right to development is described in detail in the 1986 Declaration, like all constitutional documents it is open to interpretations which may sometimes be conflicting. However, if this Declaration is read together with other instruments that are now regarded as the International Bill of Rights, viz, the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights, and if it is seen as a document on human rights evolving from the process of human rights movement, it can be given an interpretation that can be most helpful for its realisation.
The second question, related to the first, is how does it help the process of development if it is identified as a human right? In other words, is there a value addition in looking at programmes for development as a process of realisation of human rights, as spelt out in the Declaration on the Right to Development? The third question that naturally comes up would be why, then, has it been so hard to secure a consensus on this subject so far? Are the differences due to some misunderstandings in interpretations of these texts or are they due to some deeper conflict between the political and economic groups affected by the process? I would like to show that both the cold war issues and the call for the new international economic order by the developing countries raised questions which were not very pertinent to the process of realisation of the right to development. Instead, the right to development as a human right raises issues about which the world has been fundamentally divided—such as issues related to the ideas of justice, equity, and priorities of international policy. Finally, I shall try to point out that because of its association with these issues related to justice and equity, realising the right to development is fundamentally different from conventional policies and programmes for development, whether seen as increasing the growth of gross national product (GNP), supplying basic needs, or improving the index of human development.

II
Nature of the Right to Development

A Textual Analysis

I have discussed this issue at great length in my first report as the independent expert on the right to development, submitted to the Commission on Human Rights, Geneva, pursuant to Commission resolution 1998/72, and General Assembly resolution 53/155.4 It has been further elaborated in my article in the journal ‘Development and Change’ [Sengupta 2000].

The first article of the text of the Declaration on the Right to Development succinctly puts forward the concept of the right development. It states, “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in and contribute to and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realised”. First, there is a human right that is called the right to development, and this right is “inalienable”, meaning it cannot be bargained away. Then, there is a process of “economic, social, cultural, and political development”, which is recognised as a process in which “all human rights and fundamental freedoms can be fully realised”. The right to development is a human right, by virtue of which, “every human person and all peoples are entitled to “participate in, contribute to and enjoy” that processes of development.

Subsequent articles in the Declaration clarify the nature of this process of development further and elaborate on the principles of exercising the right to development. For example, Article 1 recognises that not only ‘every human person’ but ‘all peoples’ are entitled to the right to development. Article 1, clause 2, even explicitly refers to the right of peoples to self-determination. But that does not mean that ‘peoples’ rights’ can be seen as counterpoint to or in contradistinction from an individual’s or ‘every human person’s’ right. Article 2, clause 1 categorically states that it is ‘the human person’ who is the central subject of development, in the sense of the “active participant and beneficiary of the right to development”. Even if ‘peoples’ or collectives of ‘human persons’ are entitled to some rights, such as full sovereignty over the natural wealth and resources in terms of territory, it is the individual human person who must be the active participant in and beneficiary of this right.

The process of development, “in which all human rights and fundamental freedoms can be fully realised,” would lead to, according to Article 2, clause 3, “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 benefits resulting there from”. Article 8 elaborates this point further by stating that the measures for realising the right to development shall ensure, “equality of opportunity for all” in their access to basic resources, education, health services, food, housing, employment and in the fair distribution of income. The realisation of the right would also require that women have an active role in the development process, and that “appropriate economic and social reforms should be carried out with a view to eradicating all social injustices”.

To realise this process of development to which every human person is entitled by virtue of his right to development, there are responsibilities to be borne by all the concerned parties: ‘the human persons’, ‘the states operating nationally’, and ‘the states operating internationally’. According to Article 2, clause 2, “all human beings (persons) have a responsibility for development individually and collectively,” and they must take appropriate actions, maintaining “full respect for the human rights and fundamental freedoms as well as their duties to the community”. Human persons thus are recognised to function both individually and as members of collectives or communities and to have duties to communities that are necessary to be carried out in promoting the process of development.

But “the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development” is of the states, as Article 3 categorically suggests. This responsibility is complementary to the individual’s responsibility as mentioned above, and is only for the creation of conditions for realising the right and not for actually realising the right itself. Only the individuals themselves can realise the right. The actions of the states needed for creating such conditions are to be undertaken at both the national and the international levels. At the national level, Article 2, clause 3 points out that “states have the right and the duty to formulate appropriate national development policies,” and Article 8 says that states should undertake...“all necessary measures for the realisation of the right to development,” and again, “should encourage popular participation in all spheres”. In addition, the states are required by Article 6, clause 3, to take steps “to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social, and cultural rights,” because the implementation, promotion and protection of these rights would be essential for realising the right to development as “all human rights and fundamental freedoms are indivisible and interdependent”. (Article 6, clause 2) The states are also expected to take resolve steps to “eliminate the massive and flagrant violation of human rights” resulting from apartheid, racial discrimination, colonialism, foreign domination and occupation, etc, (Article 5).
In regards to the obligation of the states operating at the international level, the Declaration emphasises the crucial importance of international cooperation. First, the states have a duty “to cooperate with each other in ensuring development and diminishing obstacles to development...and fulfill these duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest...” (Article 3, clause 3). This has been further reiterated in Article 6, which states that “all states should cooperate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms”. Indeed clauses 2 and 3 clarify conditions required to fulfill the realisation of fundamental freedoms and human rights as mentioned in Article 1. “All human rights and fundamental freedoms are indivisible and interdependent” and the “implementation, promotion, and protection of civil, political, economic, social, and cultural rights deserve equal attention (Article 6, clause 2). And failure to observe civil and political rights as well as economic, social, and cultural rights may result in obstacles to development that the states are responsible to eliminate” (Article 6, clause 3).

Finally, according to Article 4, the states have the duty, individually and collectively, to formulate international development policies to facilitate the realisation of the right to development. It recognises that sustained action is required to promote rapid development of developing countries and then declares, “As a complement to the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development”.

**International Cooperation**

To appreciate fully the emphasis that the Declaration puts on international cooperation, Article 4 should be read in conjunction with the opening sentences of the preamble of the Declaration itself that refers to “the purposes and principles of the charter of the UN to the achievement of international cooperation in solving international problems of an economic, social, cultural and humanitarian nature and in promoting and encouraging respect for human rights and fundamental freedoms”. That reference was to Article 1 of the charter, and the case of international cooperation could be further strengthened by referring also to Article 55 and 56 of the charter. According to those articles, member states pledge themselves to take joint and separate actions to promote a) high standards of living, full employment and conditions of economic and social progress and development; b) solutions of international economic, social, health and related problems and international cultural and education cooperation; and c) universal respect for, and observance of human rights and fundamental freedoms without distinction to race, sex, language, or religion”. And then the charter declares that all members of the United Nations Organisations “pledge themselves to take joint and separate actions in cooperation with the organisation for the achievement of these purposes. Because the charter has a special status as the foundation of the present international system, this pledge is a commitment to international cooperation by all states within the UN. The Vienna Declaration of 1993 to which we have referred to above and which established the consensus about the right to development as a human right reaffirms the solemn commitment of all states to fulfill these obligations in accordance with the charter of the UN (para 1); that states should cooperate with each other in ensuring development and eliminating obstacles to development, and that the international community should promote effective international cooperation for the realisation of the right to development (para 10); that progress towards the implementation of the right to development requires effective development policies at the national level, and a favourable as well as equitable economic environment at the international level (para 10), and that the international community should make all efforts to alleviate specific problems such as the external debt burden of developing countries to supplement the efforts of the governments of these countries.

**Main Propositions**

The Declaration on the Right to Development is a consensus document. It is the result of a paragraph-by-paragraph negotiation to settle on an agreed text which is not always very neat, focussed, or non-ambiguous. But a textual analysis of the document as we have done above supplemented by the discussions held at the different fora at that time would clearly suggest the following four main propositions of the Declaration: (a) the right to development is a human right; (b) the human right to development is a right to a particular process of development in which all human rights and fundamental freedoms can be fully realised – which means that it combines all the rights enshrined in both the covenants and each of the rights has to be exercised with freedom; (c) the meaning of exercising these rights consistently with freedom implies free, effective, and full participation of all the individuals concerned in the decision-making and the implementation of the process. Therefore, the process must be transparent and accountable, individuals must have equal opportunity of access to the resources for development and receive fair distribution of the benefits of development (and income); and finally (d) the right confers unequivocal obligation on duty-holders; – individuals in the community, states at the national level, and states at the international level. National states have the responsibility to help realise the process of development through appropriate development policies. Other states and international agencies have the obligation to cooperate with the national states to facilitate the realisation of the process of development.

The covenants on civil and political rights and on economic, social, and cultural rights both call for international cooperation. But the Declaration on the Right to Development talks about that cooperation in the most concrete terms and places squarely on the international community the obligation to cooperate to make a success of the process of development together with appropriate policies and measures adopted by the national players. Furthermore, combining the implementation of the right to development with the other rights and a manner of exercising it which is consistent with fundamental freedoms envisions an approach to development which elevates the process of its realisation to the exercise of a human right.

The last point can be illustrated by referring to a specific right and the progress in its treatment in any programme for the realisation of the different rights. For example, the right to housing was recognised as an element in the right to adequate standard of living in Article 25 of the Universal Declaration of 1948. It was incorporated almost in the same form.
as Article 11 of the International Covenant on Economic, Social, and Cultural Rights of 1966. Since a covenant has the status of an international treaty, this was a clear step forward from the Universal Declaration. The Article 11 in the covenant states, “The state parties to the present covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The state parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.”

The Committee on Economic, Social and Cultural Rights, which has been the treaty body established by the ECOSOC to monitor and interpret the implications of the different components of the covenant, examined the right to (adequate) housing in their general comments. It stated that the right, “should be seen as a right to live somewhere in security, peace and dignity...which should be ensured to all persons irrespective of income or access to economic resources... (article 11.1) must be read as referring not just to housing but to adequate housing, (which means) adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.”

This interpretation is no doubt a further advance from the formulation in the covenant about what is meant by adequate housing. But it falls short of the standard of the right to development. The second part of the general comments lays down the characteristics of adequate housing, but even if the supply of such housing expanded substantially, it will not be fulfilling the right to development unless the individual persons have the freedom to choose what they want from among them. The first part of the comment sets forth that this right should be seen as a right to live somewhere in security, peace and dignity, (even if it is granted that it could be practically ensured to all irrespective of income or access to economic resources).

But who decides what is that ‘somewhere’ that an individual can live in security, peace and dignity? For realising the right to development, that freedom to choose, through participation in decision-making, transparently and with accountability, with equality of access, and have a fair share in the benefits, would be just as important as the supply of the housing at reasonable cost through an appropriate policy of development. In a real world situation, that freedom to choose may have to be exercised carefully, within the overall constraints of resources and appropriate, democratically arrived at procedures of maximising the choice in the presence of the possibility of disagreement among the different potential claimants. But that freedom must be there in exercising the right to housing as a part of the right to development. The state or any other authority cannot decide arbitrarily where an individual should live just because the supplies of such housing are made available.

The problem of realising the right to development, viewed from this perspective, would not appear to be just designing a set of national and international policies to implement the elements of economic, social and cultural rights, as enunciated in the covenant together with civil and political rights, but also in exercising the human rights approach of respecting the fundamental freedom of individuals to choose the lives they want to live, and exercising the rights they want to claim, transparently and accountable, through participation, with equal access, and with fair share of the benefits. The process of free exercise of the right to development is as important as the increase in the supply of means or resources that facilitate the enjoyment of those rights.

III
Value Addition in Human Rights Approach to Development

If development depends upon policy and not just in the spontaneous play of market forces, then any approach that facilitates if not ensures, more than another the formulation, adoption, and implementation of appropriate policies to realise the objectives of development would be regarded as superior. When development is seen as a human right, it obligates the authorities, both nationally and internationally, to fulfil their duties in delivering (or in human rights language, promoting, securing, and protecting) that right in a country. The adoption of appropriate policies follows from that obligation. Nationally, the government must do everything, or must be seen as doing everything to fulfill the claims of a human right. If the right to food, education, and health are regarded as components of a human right to development, the state has to accept the primary responsibility of delivering the right either on its own or in collaboration with others. It has to adopt the appropriate policies and provide for the required resources to facilitate such delivery because meeting the obligation of human rights would have a primary claim on all its resources – physical, financial, or institutional – that it can command.

Internationally, the states other than where the rights – claimants reside if they are party to the international agreement recognising those rights would also have the obligation to do everything possible to help in delivering those rights. The Declaration on the Right to Development and the Vienna Declaration have spelt out the international obligations to cooperate for realising these human rights which belong to individuals as human beings irrespective of their residence, citizenship, nationality, or religion. But even without these relatively recent declarations, the charter of the UN enjoins upon them the duty to cooperate in fulfilling human rights. They are supposed to adopt international policies and set aside resources for the purpose of realising these rights.

There is a long history behind the rise of human rights to such a predominant position of influence over government actions. The notion that every human being is entitled to some basic rights was the inspiration behind most of the revolutions in history including the English, American, French, Mexican, Russian, and Chinese. The last half of the 20th century, as noted in the Encyclopedia Britannica, may be fairly said to mark the birth of the international as well as universal recognition of human rights. In the treaty establishing the UN, all members obliged themselves to take joint and separate actions for the achievement of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. In the Universal Declaration of Human Rights (1948) representatives from many diverse cultures endorsed the rights therein set forth “as a common standard of achievement for all peoples and all nations”. And in 1976, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, each previously approved by the UN General Assembly.
in 1966, entered in force and effect. Indeed, the last half of the 20th century has seen in the words of human rights scholar, Louis Henkin, “essentially universal acceptance of human rights in principle,” such that, “no government dares to dissent from the ideology of human rights today” [Weston 1998: 2].

Indeed, it is this point that no government now dares to ignore human rights that gives the claims based on human rights such pre-eminence. There is still of course a lot of disagreement about the nature of these human rights; which rights or claims are to be regarded as human rights and which are not, and how such rights are to be realised or implemented.

But once there is a consensus, established through a due process about the nature and identity of the human rights, the governments are obliged to try to deliver them. Whether they succeed or not would depend upon the design of the programmes of implementation, whether the governments command adequate physical, financial, and institutional resources required for this implementation, and whether the governments are able to reconcile or overcome the conflicts between different groups that may arise in the process of implementation. But the obligation to deliver this right becomes a major constraint, if not the binding constraint on the behaviour of the government.

This particular force in the notion of human rights, I submit, is derived from the origins of the human rights movement associated with the principles of social contract theory. This secular theory of social contract reversed the biblical concept of contract between the people, and the states that were instituted to carry out the tasks of governance to be executed through public opinion or pressures. But more often than not, it has become a universal principle, governing the behaviour of states operating both at the national and at the international levels.

For such social contracts, what is important is the acceptance by all parties of a set of ‘human rights’ which the state parties are obliged to fulfill. In the ultimate analysis, human rights are those rights which are given by people to themselves. They are not granted by any authority, nor are they derived from some overriding natural or divine principles. They are human rights because they are recognised as such by a community of peoples, flowing from their own conception of human dignity, in which these rights are supposed to be inherent. Once they are accepted through a process of consensus building, they become binding on at least those who are party to that process of acceptance.

The right to development when it is accepted as a human right through a legitimate process of consensus building, therefore, becomes a primary claim on resources of a country, – when resources are taken in the broadest sense as being whatever instrument that is necessary to realise certain objectives – physical, financial, or institutional. It also entails a legitimate right of reprimanding the parties which have the obligation to deliver as the counterpart to the holders of rights. The exact process of reprimanding may vary according to circumstances. For a national government, this can be executed through a judicial process of compensation or reparation if these rights which are violated are justiciable. Otherwise, it may follow the route of legislative changes and parliamentary sanctions. It can even take the form of changing or overthrowing the government.

Internationally such reprimand has taken the form of sanctions or international pressures. But more often than not, it has to be executed through public opinion or through the process of international law, compacts, or mutual agreements, especially when the obligation-holders are not just the national governments where the right-holders reside but all other governments who are party to the covenants establishing that right.

The importance of having a social contract around a set of human rights almost in the same form and spirit as in the 18th century was well recognised at the time.
of the formulation of the Universal Declaration of Human Rights. In the third preamble of the declaration, it was stated, “it is essential if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.9 That is the signal to approaching the problem of realisation of human rights through a legal process or a mutually enforced framework of positive action both at the national and at the international level. The right to development, once it is established as a human right would be entitled to similar treatment as it is meted out to any other universally accepted human right.

IV Controversies Regarding the Right to Development

Once the right to development is viewed in this manner – as a human right derived from an implicit social contract binding civil society that identifies duty-holders both nationally and internationally, (primarily the nation-states and the international community, individuals, and groups operating in civil society) with the obligation to deliver this right – it should be easy to appreciate the controversies surrounding this right. First, for many years and especially during the cold war period the western democracies and the second world socialist countries were not willing to treat civil and political rights and the economic, social, and cultural rights at par, or on equal terms, not to speak of regarding them as components of an integrated whole of an international bill of rights. That is why we not only had two separate covenants on these two sets of rights, but also the western block was upholding the civil and political rights and the socialist countries pressured for the economic and social rights. On a formal plane the controversy was to have been resolved with the adoption of the right to development. But the reasons for taking these contrary positions kept lingering and was further complicated by the third world countries putting forward the case of the right to development in the name of the collective rights of a group of countries to bring about a New International Economic Order. If some of the industrialised countries would not support the economic and social rights, they would find it even more difficult to support the right to development.

Discounting the purely political and cold war reasons for the countries taking their respective positions, the reasons for western countries supporting civil and political rights but opposing economic and social rights as human rights can be summed up as, (a) human rights are individual rights; (b) they have to be coherent, in the sense that each right-holder must have some corresponding duty-holder whose obligation would be to deliver the right and (c) human rights must be justiciable. All these criticisms, if they are valid, would hold against the right to development.

The identification of human rights completely in terms of individual rights would imply total acceptance of the theory of natural rights. As Donnelly puts it, in the Universal Declaration of Human Rights of 1948, “human rights are clearly and unambiguously conceptualised as being inherent to humans and not as the product of social cooperation. These rights are conceptualised as being universal and held equally by all, that is as natural rights” [Donnelly 1985: 5; Alston 1979: 6; Alston 1988: 7; Sen 1999: 8].9 In that paradigm, human rights are only personal rights, based on negative freedom, such as the right to life, liberty and free speech, whereby the law prohibits others from killing, imprisoning, or silencing an individual who has a claim to such freedoms that the state is expected to protect. Economic and social rights are associated with positive freedoms which the state has to secure and protect through positive action. They are not natural rights, therefore, according to this view, not human rights. Collective rights are more than individual rights and to the extent the right to development is essentially linked to collective rights as well as positive economic rights, it would be disqualified from being regarded as a human right.

All these arguments have been substantially repudiated in literature. The Universal Declaraton has many elements going beyond the principles of natural rights. In fact, it is firmly based on a pluralistic foundation of international law with many elements of economic and social rights, considering an individual’s personality as essentially moulded by the community [Alston 1988: 7].10 Indeed, logically, there is no reason to take the right of a group or a collective (people or nation, ethnic or linguistic groups) to be fundamentally different in nature from an individual’s human rights so long as it is possible to define the obligation to fulfill them and duty-holders to secure them. Even personal rights can be taken as rights to be protected by individuals and groups [Taylor 1986: 10; Dyke 1985: 11].11 Furthermore, it is well established that the identification of civil and political rights with negative rights and economic, social and cultural rights with positive rights is too superficial because both would require negative (prevention) as well as positive (promotion or protective) actions. So logically, it is hard to regard only civil and political right as human rights and economic and social and collective rights as not human rights. As we have noted above, it is ultimately for the concerned people to decide what they would regard as human rights and which the states would have the obligation to deliver [Alston 1988: 7].12

The second criticism, which Amartya Sen has described as ‘the coherence critique’ is spelt out as, “Rights are entitlements that require correlative duties. If person A has a right to some X, then there has to be some agency, say B, that has a duty to provide A with X. If no such duty is recognised, then the alleged right, in this view, cannot but be hollow.” This would seem to make it very difficult for many of the positive rights to be treated as rights proper, without identifying ‘agency-specific duties’, such as in the case of “every individual having a right to food, to medicine or to education”. Sen believes that it is possible to resist the claim that any use of rights except with co-linked perfect obligation lacks cogency. In many legal contexts the claim may indeed have some merit, but in normative discussions rights are often championed as entitlements or powers of immunities that would be good for people to have. Human right are seen as rights shared by all – irrespective of citizenship – the benefits of which every person should have. While it is not the specific duty of any given individual to make sure that the person has his right fulfilled, the claim can be generally addressed to all those who are in a position to help.”13 Sen defines perfect obligation following Immanuel Kant as a specific duty of a particular agent for the realisation of a right, and then describes what Kant himself had characterised as “imperfect obligation”, – “When the claims are addressed generally to anyone who can help, even though no particular person or agency maybe be charged to bring about the fulfilment of the rights involved” [Sen 1999: 8].14

In terms of this approach, the assertion of a human right would require the identification of a set of duty-holders who are
in a position to help to deliver the rights and that demands are placed on them that they should try to help. If these claims can be made legal, with appropriate legislation, covenant, or treaty, then such obligation may become binding. Otherwise, they remain a moral standard which may not have a legal sanction, but which in many situations maybe as forceful in persuading all the duty-holders to deliver those rights.

In this perspective, any economic or social right for an individual or a collective can qualify as a human right, provided the moral standard or the ethical assertion of the right is accepted by all people in a particular civil society; and provided it is possible to identify at least a group of possible duty-holders, if not one specific duty-holder, who are in a position to deliver that right and who are willing to accept their obligations to help. From that point of view, the economic, social, and cultural rights according to the international covenant, and the right to development according to the Declaration of 1986 are all human rights. They have been adopted by the international community of states through a legitimate process of consensus building at the UN and they have enumerated the rights and all the duty-holders. Primary among them being nation states complemented by the international community of other states and multilateral agencies. What would be needed is an agreement about the procedures to be followed and the programmes to be implemented by all the duty-holders. In addition, what maybe needed is to formulate a legislative basis for the obligations morally accepted to become legally obligatory.

It will be seen from these discussions that the third criticism that the human rights must be justiciable does not have a decisive force. The sceptics who doubt the appeal and effectiveness of ethical standards of rights-based arguments would not consider a right to be taken seriously unless the entitlements of those rights are sanctioned by a legal authority, such as the state, based on appropriate legislation. As Sen puts it, these sceptics would say, “Human beings in nature no more are born with human rights than they are born fully clothed; rights would have to be acquired through legislation, just as clothes are acquired through tailoring”[Sen 1999: 8].15 This criticism confuses human rights with legal rights. Human rights are based on moral standards on a view of human dignity, and which have many different ways of fulfilment depending on the acceptability of the ethical base of the claims. This does not of course obfuscate the importance or usefulness of such human rights translated into legislated legal rights. In fact, every attempt should be made to formulate and adopt appropriate legislative instruments to ensure the realisation of the claims of a human right once it is accepted through consensus. These rights would then be backed by justiciable claims in courts and by authorities of enforcement. But to say that human rights cannot be invoked if they cannot be legally enforced would be most inappropriate. For many of the economic and social rights and the right to development, and even for some elements of civil and political rights, the positive actions that are necessary may often make it very difficult to identify precisely the obligations of particular duty-holders to make them legally liable to be prosecuted. Enacting appropriate legislative instruments for any of these rights would often be a stupendous task and it would be often useful and necessary to find alternative methods of enforcement of the obligations rather than through the courts of law.

Monitoring of Implementation

In fact, for many of the positive rights implementability is often more important than enforcement. Designing a programme of action that would facilitate the realisation of the right might be a better way of going about it than trying to legislate on those rights. In that case, what may be required is some monitoring authority or some dispute settlement agencies, than a court of law settling claims. Democratic institutions of local bodies, or non-governmental organisations, or public litigation agencies, may prove to be quite effective in dealing with the rights-based issues which are not amenable to exactly-formulated legislative principles.

Finding such monitoring agencies or consultative forums may often be the only way to enforce obligations of the international community, their agencies and governments, to cooperate in fulfilling the rights as envisaged in the right to development. Indeed, justiciability of international commitments must be dealt with differently from the enforcement of national obligations. The world has of course many different agencies of international arbitration of which the international court is only one. These are established institutions and procedures for settling trade and financial disputes. For human rights, however, such agencies may not be useful unless the failure of the obligation can be put in a relevant form admissible to these institutions. The human rights treaty bodies, operating mostly on reporting methods, may be often quite inadequate, even when direct complaint procedures are available. What would be needed in most cases is a forum where international agencies and concerned governments could get together and talk to each other. A transparent consultation mechanism, subject to the democratic pressure of public opinion may often play a much more significant role in enforcing institutional agreements, especially on human rights, than any outside judicial authority.

Collective Rights vs Individual Rights

There is a different type of criticism which has been most persistently levelled against the right to development, in particular, in addition to the criticisms mentioned above that are application to all rights other than the civil and political rights. The right to development was promoted both by the third world protagonists and first world critics as a collective rights of states and of peoples for development. We have already dealt with the problem of the admissibility of collective rights as human rights as against individual rights and have argued that it is perfectly logical to press for collective rights to be recognised as human rights. But then care must be taken to define the collective rights properly and not in opposition to individual rights per se. Indeed there are legal institutional agreements and covenants that have recognised and built upon collective rights and the declaration on the right to development itself has recognised the collective right of peoples in its Article 1 when it states that every human person and all peoples are entitled to the human right to development and also the right to self-determination, exercising “their inalienable right to full sovereignty over all their natural wealth and resources”. But now these collective rights are seen as opposed to, or even superior to the right of the individual. The declaration of the right to development states categorically, (Article 2) that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development”.

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One of the most articulate defenders of the third world position regarding collective rights, Georges Abi-Saab, a professor at the Graduate Institute of International Studies in Geneva, suggests two possible definitions of collective rights. First, as a sum-total of double aggregation of the rights and of the individuals. (If there are \( n \) different rights, \( r_1, \ldots, r_n \), and if there are \( m \) different individuals \( j = 1, \ldots, m \), having these rights, the collective rights will be \( R = \sum_{i=1}^{n} \sum_{j=1}^{m} r_{ij} \). This, as Abi-Saab says, has the intent of highlighting the link between the rights of an individual and the right of the collectivity. The second definition of collective rights is seen as a right from the collective perspective, “without going through the process of aggregating individual human rights by considering it either in the economic dimensions of the right of self-determination, or alternatively as a parallel right to self-determination.”

Both these definitions build up on the rights of individuals. Indeed, the right to self-determination gives a nation, “the full sovereignty over all their natural wealth and resources” but that has to be exercised for the benefit of all individuals. In the case of an individual, the rights-holder is also the beneficiary of the exercise of the right. In the case of collective right, such as that to self-determination, the right-holder may be a collective such as a nation, but the beneficiary of the exercise of the right has to be the individual. There may of course be some occasion when the right of a particular individual may come into conflict with the right of a collective. An obvious example would be the closed-shop practices of a trade union conflicting with the right to work of a particular unemployed person. But the beneficiaries of a trade union practice must be all individual workers, and not just the trade union, as an organisation, its management and its treasury. It is also quite possible that different rights or different individuals enjoying a right may come into conflict in some specific situations. It would be necessary to institute some transparent procedures to resolve these conflicts. But such procedural restrictions in dealing with the exercise of a rights does not detract from the nature and importance of the collective right seen as built on individual rights.

It is important to note this point on the integral relationship between the collective and the individual in understanding the human rights approach to development. The Commission on Human Rights in a resolution (No 5 XXXV) as early as in 1975 – well before the declaration on the right to development was adopted – stated that “development is as much a prerogative of nations as of individuals within nations”. Indeed, in many cases individual rights can be satisfied only in a collective context and the right of a state or a nation to develop is a necessary condition for the fulfilment of the rights and the realisation of the development of individuals.

Indeed, most of the demands of the developing countries during the 1970s when the content of the right to development was negotiated can be put forward in these terms. The integrated programme of commodities, the generalised preference scheme, industrialisation, and technology transfers and all the essential components of the New International Economic Orders were the claims made on behalf of the developing countries which were all meant to be preconditions for development of all peoples in those countries. Many of these proposals may not be relevant any more in the changed conditions of the world economy and the developing countries themselves may not put them forward as parts of their development agenda. But during the 1970s and 1980s they were regarded as highly relevant and it is reflected in the wording of the preamble of the Declaration of the Right to Development. However, they were never meant to disregard the primacy of individual rights which used the foundations of human rights theory and which developed over time with collective rights complementing the individual rights. Those who detract from the significance of the right to development by arguing that it is a protection of a collective right of the state or the nation, in conflict with the individual rights foundations of the human rights tradition are more often than not politically motivated.

The third world proponents of the right to development also must take a serious note of the implication of the human rights approach to development as collective rights of a nation or a state. The exercise of those rights must lead to the realisation of the right of all individuals to development, which means a particular process of development where all human rights and fundamental freedoms can be fully realised. We have analysed the text of the declaration to establish that this would imply (a) effective participation of all individuals in the decision-making and the execution of the process of development, which would necessarily require transparency and accountability of all activities; (b) equality of access to resources and (c) equity in the sharing of benefits. These are essential elements of the process of development which make the right to that process a human right and which is the foundation of a right to development – development with equity and justice. Now it must be clear that economic growth and development of a state or a nation does not automatically lead to this process of development. In fact, if very specific policies are not taken to realise such development, the economic growth of a state increasingly often tends to the concentration of income and wealth, making the rich richer, even if not always the poor poorer.

The main motivation behind the developing countries clamouring for the New International Economic Order was the demand for equity in dealing with the running of the international economic system, in all its trade, financial, and technological relationships. The specific methods of such running of the world economy may have changed over time, and the international economic order of today, defining the relationship between the different economies and the rules and procedures of their interactions, are quite different from the international economic order of the 1960s and 1970s. But the basic requirements for equity and justice in the process of development fulfilling the human right to development have not changed. So if a country wants to develop along the path of the right to development, it must ensure the fulfilment of all the human rights consistent with equity and justice.

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Characteristics of the Development Process with Equity

It is important to appreciate the full significance of the point that the right to development associates development with equity and justice. Any human rights approach to economic and social policy may be constructed on the basis of justice because it follows from a notion of human dignity and of a social contract in the drawing of which all members of the civil society are supposed to have participated. But not all theories of justice are based on equity. The Universal Declaration of Human Rights contains elements to show that equity was one of its concerns. How-
ever, the Declaration on the Right to Development is, without question, founded on the notion that the right to development implies a claim for a social order-based on equity. Not only do several of its articles clearly call for equality of opportunity, equality of access to resources, equality in the sharing of benefits and fairness of distribution, as well as equality in the rights to participation, its preambular paragraphs also call for the New International Economic Order. And the tenor of the debates that took place at the UN and other international fora during the period of the negotiation and adoption of the draft left no one in doubt that what the proponents of the right to development were asking for was an economic and social order-based on equity and justice. The have-nots of international economy would have a right to share equally in the decision-making privileges as well as in the distribution of the benefits just as the rich developed countries.

The significance of the north-south divide among the countries in the world economy may have become diluted in the contemporary inter-dependent world. But the essential spirit of the demand for equality would still remain in force in all forms of international cooperation envisaged in the realisation of the right to development. Within a national economy also, development as a human right, according to the Declaration on the Right to Development, has to be firmly rooted in equity. The claim that the right to development is a human right is a claim for a process of development with equity and justice. The state parties which have acceded to this demand have taken on the obligation to deliver such a process of development through programmes of national policy and international cooperation. In other words, the policy programmes that are designed nationally and internationally must take fully into account the concerns and the requirements of equity.

The Article 1 of the Declaration as we have noted above talks about the right to development as a right to the process where all fundamental freedoms are realised. At the time it was drafted, this way of defining development which other General Assembly resolutions around that time described as expansion of well-being of all individual members of a community, purported to go beyond looking at development simply in terms of growth or income or opulence. Today, especially after the publication of Amartya Sen’s book, *Development as Freedom*, referred to above, the development process can be most aptly described as expansion of substantive freedom or “capabilities of persons to lead the kind of lives they value or have reasons to value”. Indeed, it is possible also to identify the capabilities with human rights as propounded in the Universal Declaration of Human Rights [Nussbaum 1999: 12].

One advantage of that would be to situate such human rights firmly in a theory of justice that would bring out the logical implications of a concept of equity. That would hopefully improve our ability to operationalise the notion of equity and fairness embedded in the right to development.

The Universal Declaration of Human Rights recognises a form of equity inherent in human dignity with equal and inalienable rights as the foundation of freedom and justice; that all men are born free and equal in dignity and rights; that all are equal before the law; and that all are entitled to equal protection against discrimination and that everyone has the right to freedom of thought, religion, expression and opinion. It is possible to build up a whole structure of relationships with equity on the basis of political and civil rights. But in the Universal Declaration everyone has a right to an “adequate standard of living, for health and well-being, including food, clothing, housing, medical care, and necessary social services, without mentioning that it should be equitable. In the Declaration of the Right to development, however, it states [Article 8] that for the realisation of the right to development, the states shall ensure “equality of opportunity for all in the access to basic resources, education, health services, food, housing, employment and the fair distribution of income. This together with its emphasis on every person being entitled to ‘participation in, contributed to and enjoy’ development process where “fundamental freedoms can be fully realised”, should be seen against the preambular statements, viz, “equality of opportunity for development is a prerogative of nations and of individuals who make up nations”, to appreciate the central message of equity and justice in the right to development.

Quite clearly the right to development was elaborating on a concept of development that did not deny the importance of the growth of income and output which enhanced the expansion of basic resources and the opportunities for development. But it had to be realised in a manner that ensured a fair distribution and equality in access to the resources and expanded the fundamental freedoms of the individuals. These freedoms as Sen points out today, should be seen as enabling all individuals to freely choose to participate in the development process and partake in the enabling all individuals to “the primary end” and “the principal means” of development, both in a “constitutive role” and in the “instrumental role” [Sen 1999: 8]. All the individuals have the right to participate in decision-making.

That development is not related only to the growth of GNP has been known to the economists from the very beginning from the times of Adam Smith. But most of them were persuaded to accept the principle of maximising the per capita GNP as the basis of their strategies of development, because as W A Lewis, the Nobel laureate in development economics wrote in “The Theory of Economic Growth”, the growth of output per head “gives man greater control over his environment, and thereby increases his freedom”. The right to development does not deny this positive impact of the growth of GNP. But it calls for additional policy actions to accelerate the expansion of these freedoms together with equity and justice.

There were many economists and policymakers who were also influenced by the Kuznets thesis that income growth and income equality are negatively related, which meant that policies to increase equality may actually lead to reduce growth. Empirical research has actually failed to substantiate that thesis on the basis of experiences of developing countries. But even those who did not subscribe to this thesis did not always plead for adopting policies that would alter the structure of the development process-based on consideration of equity. They would rather follow policies that maximised the growth of GNP and then adopt some redistribution measures to improve the lots of the poorest and the worst off. This was the case with the famous “minimum needs approach,” according to which the international agencies such as the World Bank tried to help the developing countries to supply the poor with provisions that met these minimum needs.

The right to development is proposing a qualitatively different approach, in which considerations of equity and justice are primary determinants of development. Not only that, the whole structure of development is shaped by these determinants.
example, if poverty has to be reduced, the poor have to be empowered and the poorest regions have to be uplifted. The structure of production has to be adjusted to produce these outcomes through development policy. The aim of the policy should be to achieve this with the minimum impact on 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 minimised. If a group of destitute or deprived people have 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.

The rights approach to development requires us to re-examine the ends and means of development. If improvement of well-being of the people based on the enjoyment of rights and freedoms is the objective of development, economic growth consisting of the accumulation of wealth and gross national product would not be an end in itself. It can be one of the ends, and can also be a means to some other ends, when ‘well-being’ is equivalent to the realisation of human rights. As Sen would have put it, a prosperous community of slaves who do not have civil and political rights cannot be regarded as a community with well-being.

Notes
2 The state of the union message to Congress by president Roosevelt (January 11, 1944).
6 Committee on Economic and Social and Cultural Rights, General Comment 4, (The right to adequate housing (at 11.1) of the covenant. On the completion of general comments and general recommendations adopted by the Human Rights Treaty Bodies, UN Doc HRT/Gen/1/Rec 12, 1994.
7 Cited in the article by Burns H Weston on ‘Human Rights’ in Encyclopedia Britannica, online version updated 1998.
8 For a discussion on the development of the doctrines of natural law and natural rights as well as constitutions and social contracts, besides the articles in the Encyclopedia Britannica, see, Richard Tuck, Natural Rights Theories Origins and Development (Cambridge 1979) and Richard McKeon (1968), ‘Philosophy and History in the Development of Human Rights’ in Ethics and Social Justice, H E Kiefer and M Munitz (eds), State University of New York Press.
9 The Universal Declaration of Human Rights, 1948, the preamble.
13 Philip Alston put it categorically, “It is a matter of human decision what kinds of units are accepted as right-and-duty bearing units and what kinds of rights they shall have.” Alston, op cit. Footnote 10.
15 Sen, Amartya, ibid.
16 Sen, Amartya, Ibid, p 228
19 Sen, Amartya, Development as Freedom, op cit, p 16.

References

At the Conference of the Right to Development’, Harvard Human Rights Yearbook 1, 3-40.


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