

Development: Do People have a Right?*

Mr. Rukshana Nanayakkara

According to UN sources 40% of the Sri Lankan population is living in abject poverty. Unfortunately many Sri Lankans who are not living in poverty do not seem to care or sometimes they tend to help the poor as a gesture of extending their sheer sympathy toward them. The latter sometimes attribute poor people's lack of initiative and courage to their status. While it is recognizable that personal conviction and courage is necessary in constructing one's own experiences, the history of power relationship of a State and the income imbalances promoted by the legal system of a country play a key role in establishing and maintaining an inequitable societal structure.

Poverty was viewed primarily as a problem of economic insufficiency. But it necessarily includes material deprivation and human deprivation including low achievements in education and health. This inevitably results and increases vulnerability, voicelessness, powerlessness and exposure to risk among the poor. Therefore to believe that poverty is based on individual failure ignores these results created by existing legal, societal and political structures. Rather, such systems perpetuate income imbalances both internally in a nation state and globally keeping the poor in the cyclic effects of poverty.

For example, the prevailing legal rules in some of the personal laws in Sri Lanka maintain an economic imbalance between men and women contributing to a disadvantageous economic status for women. The lack of knowledge of English among the poor (in a system where easy access of learning the language is only limited to a significantly small sector of the society) may deprive them of advantageous economic opportunities. Thus people with more opportunities can generate higher income increasing their power of obtaining assets and investing them. This increases their ability of providing better benefits to their children (e.g. private, individualized and, frequently superior academic experiences and extracurricular lessons or opportunities) that then often lead to privileged secondary education and access to higher paying jobs. This process of continuation of privileges creates an ongoing "entitlement", in legal, sociological and political sense only for a particular class of the society.

Another example can be found in present developments in intellectual property and patent law which contribute to maintain an income and power imbalance between developed and developing nations. Interpretations on who owns and creates a production results in profit to multi national cooperations in developed countries while indigenous populations lose the financial benefits of their knowledge.

Although there can be piecemeal efforts to rectify such existing disparities, most fluid equal opportunity schemes in employment, education, health etc, which are insensitive to any category of people who were previously discriminated against due to disability, sexual orientation, gender or race, again ignores this asset imbalance.

Therefore in an environment where existing societal, legal and political structures construct rather than combat poverty anti-poverty, initiatives should be perceived in a rights perspective. Such an approach will break open the stereotypical idea of poverty as an issue of individual failure as opposed to cross cultural, political and social issue.

Right to Development

The right to development necessarily signifies the creating of possibilities for the improvement of living conditions. This improvement goes beyond the traditional yardstick of economic development embracing education, health, culture, democracy and respect to human rights. In other words, development cannot be perceived simply as an economic issue, and it is equally important to view it from a human stand point. In his report to the UN Commission on Human Rights (1997), the Special Rapporteur of the Sub-Commission on extreme poverty wrote: "A person's living and working conditions had a direct effect on the quality of the work itself. It was thus essential to take every aspect of life and not merely the economic into account."

The 1986 Vienna Declaration on Right to Development recognized and described the right to development as a human right. This means a universal and inalienable right that is inherent in all human individuals by virtue of their humanity alone, and as such should be respected, protected and promoted not only by states, but also by the entire international community. Further this recognition links this right with both civil and political rights as well as socio economic rights, because the primary idea of the right to development is to achieve social development which covers the wider spectrum of human life.

A vague recognition of the Right to Development can be found in Article 28 of 1948 Universal Declaration of Human Rights (UDHR). The Article reads: 'Everyone is entitled to social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.' While the UDHR includes both civil and political rights and socio economic rights, the emergence of the two legally enforceable documents, the International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights fed more into the debate of indivisibility of human rights. The idea of this article is not to focus on this debate. Nevertheless, it should be noted that in the dichotomy between civil and political rights on the one hand and social, economic and social rights on the other, it is still the former which is being given priority by the most affluent nations in the world. This is important in the context of the historical responsibility of developed countries in the present state of poverty

and backwardness in least developed countries. It is well recognized that in order to repair the past misfortunes of least developed countries the developed countries have to assist them. In this regard it is paramount to recognize the right to development.

The 1986 Vienna Declaration recognition of Right to Development was further justified by the 1993, the World Conference on Human Rights by including Right to Development as a basic human right. The conference sustained the view that 'human rights, including individual or collective rights, are intrinsically linked to the full realization of the Right to Development. Any separation of these two types from Right to Development undermines the universality, indivisibility of and interdependency of human rights.' Further the High Commissioner of Human Rights made a similar observation in 1998 where it was recalled that "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

Theoretically this recognition should have put an end to lengthy and fruitless discussion regarding the priority of one set of rights over the other. Unfortunately, in practice this sterile debate is still continuing and the industrial world seems to be determined to promote individual human rights and fundamental freedoms, while poverty is increasing. According to the statistics, one-fifth of the world's population is living in extreme poverty while the richest 20 percent receive nearly 83 percent of the worldwide income. As the world economy is growing the rich are getting richer and the poor poorer, primarily due to unjust, unethical and inequitable international economic order.

Right to Development and Sri Lanka

Being a less developed country Sri Lanka prominently derives the notion of development from two difference and complimentary factors. One is the above mention duty of developed countries to assist Sri Lanka in her development goals. Second is the extension of the recognition of rights related to development in the legal structure of the country.

The basic law of Sri Lanka recognizes no socio economic rights in its chapter. While there are a number of other statutory provisions to safeguard the aspects of right to development, this negation has justified the extreme liberal view of championing civil and political rights. Nevertheless it is commendable that this negation has overcome through innovative interpretation of existing civil and political rights in few a instances. The most discussed Eppawala case provides a prime example where existing Article 12(1)- Right to equality, 14(1)g- freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise and 14(1) (h)- freedom of movement and of choosing his residence within Sri Lanka were used to protect the livelihood, culture, environment,

certain aspect of living condition as well as the rights of yet to be born in terms of protecting their future entitlement to use earth's resources: aspects included in right to development.

In *SmithKline Beecham Biological v State Pharmaceutical Corporation of Sri Lanka*, the Supreme Court took steps to protect the right to health of both present and future generation in the country under Article 12(1) of the Constitution. The arbitrary action of the Sate Pharmaceutical Corporation to award a supply order to a company (Unregistered Company under Cosmetic and Drugs Authority) for two million doses of rubella viral vaccine was declared unlawful by the court. Consideration of possible health risk for the future generation was the main highlight of the case.

In *Thuruwila case*, water of Thuruwila tank, a traditional water resource of people was arbitrarily decided to divert to another use. While facilitating a settlement between the parties the court recognized people's right to traditional waster sources a strong aspect of right to water, another socio economic right.

Although these cases are significant milestones in the evolution of socio economic rights in the country, it is equally imperative to focus on Constitutional Amendments to include expressive articles on socio economic rights. Otherwise, the realization of socio economic rights will always require an innovative judicial intervention.

Right to Development and Global Economic Order

While the national policies and the political system of nation states pave the way for country specific realization of right to development, such policies naturally get shaped by the globalized economic order. The current economic order is a result of carefully planned legal and institutional changes embodied in a series of agreements and mainly controlled by the international financial institutions. This economic globalization poses great threat to the population in least developed countries affecting the human rights situation in those countries as a result of widespread poverty. Conditions imposed in international trade, the growing energy crisis in many parts of world, adversely affect the vulnerable segments in the developing countries who have no or less bargaining power in shaping economic policies. Massive cuts in healthcare, education, and social services following World Bank and IMF programmes are causing instability, racism, refugee and migrant flows, illicit drug-trafficking and religious fundamentalism, ethnic conflicts and environmental degradation.

Therefore it is important that the governments of the industrial countries and international financial institutions take into account these aspects of global order in their assistance polices towards developing countries. In that sense the Right to Development concept should be

included in the structural adjustment policies carried out by these players. It is essential to move away from inflexible programmes that ignore the social and political differences between countries and move towards projects that take into account social considerations and the political feasibility of structural adjustment and investment programmes, realizing that growth does not automatically benefit the poor unless specific measures are taken to help the weakest and most vulnerable groups.

Despite the negative ramifications of globalization, it would be wrong to place the entire burden of underdevelopment and poverty on rich countries and international financial institutions. Many developing countries fail to initiate progressive actions at the national level to adopt economic reforms which suits their nations and the failure to create acceptable living conditions has resulted in a situation where malnutrition, homelessness and unemployment are on the increase. The high level of corruption, unnecessary expenditure (e.g. appointment of a large pool of ministers in Sri Lanka) and non-utilization of aid money confine these countries to the vicious circle of debt, resulting in an increase of interest and loan installment payments. The debt payment by third world countries is a modern form of slavery and contributes largely to the expansion of poverty. In most developing countries a significantly small amount is allocated to poverty programmes and debt payments play a key role in their budgets.

Conclusion

Though Sri Lanka possesses commendable physical living quality standards, especially in the areas of health and education, the overall fulfillment of development goals is far from being realized. The proposed privatization schemes without public participation and awareness, non-existence of a legal structure to protect socio-economic rights, lacklustre civil society campaign in the protection and promotion of socio-economic rights, corrupt and non-transparent political structure and lack of creative political willingness to bring peace to the country, question our ability of fulfilling the goals of right to development and have pushed Sri Lanka to an insignificant status in the global campaign in this regard. Though Sri Lanka is a vulnerable player in the universal process of globalization its status provides no excuse for not fulfilling at least its core minimum obligations to its people in the socio-economic rights sector.

The guidelines given by the Committee on Economic, Social and Cultural Rights of the United Nations in its General Comments can be used in identifying these core minimum obligations in each sector in the socio-economic field. According to the Committee availability- e.g. in the field of education the facilities in terms of both goods and care should be available in sufficient quantities; accessibility - e.g. in the field of health goods and services should be accessible to everyone without any discrimination; acceptability- e.g. any service provided in a particular sector should be appropriate with in the existing socio, economic structure of the society; quality - e.g. in the field of health the service should be scientifically and medically

appropriate and of quality; should be considered in any development program in the socio economic right field.