

A prosperous tomorrow: the realisation of the right to development through Mahinda Chinthana goals

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Abstract— This paper will focus on the ways and means of using the home-grown development strategies set out in the Mahinda Chinthana for creating a society where every Sri Lankan enjoys prosperity and peace.

Background: It is said that Human Rights, Peace and Development are inextricably linked and are all parts of a triangle and that one cannot exist without the other two components. Special emphasis of this paper will be on Development as a Human Right. Human Development means the Development of the human person in recognition of his inherent dignity. Globalisation must embody the right to development which the General Assembly of the United Nations has declared to be an inalienable human right and of which the human person should be the active participant and beneficiary. However, one must remember that the concept of Human Rights was born out of Asian cultural and religious beliefs such as 'Dharma' and 'Ahimsa'. It is submitted that peace, contentment and development of the human being that is assured by the Right to Development under International Human rights Law; can be delivered more effectively through home-grown, indigenous, national policies and strategies.

Research Problem: Can the Right to Development of Sri Lankans be guaranteed through the achievement of Mahinda Chinthana Goals?

Hypothesis: It is hypothesized that rather than blindly following foreign models in the implementation of the right to development, equitable development in Sri Lanka can be materialized through national mechanisms such as Divineguma and Mahinda Chinthana Goals. This is because these ideas and endeavours were born out of Sri Lankan soil; developed by Sri Lankan minds.

Research Methodology: This research will require gathering of relevant data from interviews, different documents, journal articles, text books and websites. I hope to conduct interviews with State and non-State actors and the general public and determine how the Mahinda Chintana Goals could be implemented and how it can be coordinated and connected with legal and administrative mechanisms.

The main focus of this paper will be the Mahinda Chinthana Goals of the Affectionate Family, Diriya Kanthawan

(resourceful women), Rights of the differently-abled, enhanced personal incomes, housing for all, the prosperous village and national consensus towards honourable peace. The above areas will be analysed in the light of Human Rights and duties. Practical recommendations will be presented in the form of activities which could be integrated into the National Action Plan on Human Rights. The possible obstacles to the realization of these goals will also be discussed.

Keywords— Peace, Development, Human Rights

I. INTRODUCTION

This research paper looks at home grown structures such as the Mahinda Chinthana Goals and the Divineguma policy as a vehicle promoting Peace, Development and Human Rights in Sri Lanka. The poverty-related issues faced by a group of rural women living in Thalpe is taken as a case study. It is argued in this paper that the means of the realisation of the Right to Development can be effected with the use of indigenous Sri Lankan machinery.

This paper will critique the recent judgement of the Supreme Court of Sri Lanka which deals with the Divineguma Bill. The important concepts enshrined in the Mahinda Chinthana Goals will be considered for practical application. The National Action Plan and the LLRC Recommendations will be looked at to find ways and means to pave the way for a prosperous Sri Lanka.

Pathma is a rural woman living in the Southern Coastal village of Thalpe. Her husband worked as a Goldsmith until he suffered a nervous breakdown after the family was suddenly evicted from their ancestral property by his brother after the demise of their parents. Pathma and her children faced severe hardship in the form of homelessness, starvation and lack of resources to fund for the education of her three children.

There are millions of such victims of indigent circumstances all over Sri Lanka. How should the state facilitate the development of Pathma and the members of her family and of those in a similar plight? Is it by using mechanisms under International Human Rights Law that we attempt to find a solution to their problems or would it be more effective to go through home grown channels in search of a solution for Pathma and her beautiful family?

Poverty Alleviation, development of the human being under International Human Rights Law, Economic, Social and Cultural Rights were focussed upon deeply at the Vienna Convention Conference on Human Rights. (Omean Shafei 1994) Among the major issues discussed by the Conference or at its preparatory stages was “Who are the most disadvantaged?”

Among those mentioned and proposed to be focussed upon were the following:

1. The civilian victims of war
2. Refugees and asylum seekers
3. Rural poor and others living in extreme poverty
4. Women and young girls
5. Children including street children
6. Victims of torture and disappearance
7. Victims of racism
8. Victims of human rights violations arising from colonial domination and foreign occupation.
9. Victims of terrorism.

Clearly, Pathma falls into the category of (3) and (4).

Can a practical solution be found by claiming relief through the Right of Development and Economic and Social Rights?

Is Pathma a beneficiary of Right to Development?

According to Arjun Sangupta the right to Development is a new phase of human development that combines the human rights approach with programmes and policies of human development. In a nutshell, as Sen has described, human development means expansion of freedom, people’s ability to lead lives of their choice, with the removal of obstacles such as hunger, malnutrition, ill-health and illiteracy and economic insecurities. Development is then defined as expansion of freedoms. Human Rights on the other hand are claims that people make for certain privileges and advantages as rights, which society must provide as first priority, because these rights are the foundation norms of society.

Economic and Social Rights are usually given step-motherly treatment in Constitutions. Economic and Social Rights surface in the 1978 Constitution in the form of Directive Principles of State Policy. These Principles have been set down for guidance of Parliament, the President and the Cabinet of Ministers in the enactment of laws and governance of Sri Lanka for the establishment of a just and free society. Dr. Ambedkar has stated, with regard to the Directive Principles of State Policy contained in the Indian Constitution, that the Government “may not have to answer for their breach in a Court of Law”, but will “certainly have to answer for them before the electorate at election time.”

It is interesting to focus on the Divineguma Concept which was introduced by the Ministry of Economic Development. The Divineguma Bill which was introduced to Parliament by the Minister of Economic Development. This Bill establishes the Divineguma Department. It also seeks to establish Community Based Organisations at rural level and create a network at District level.

The Preamble says it will effect social equity through individual, family and group centred livelihood activities. It is interesting to note the objects of the Department which are carrying out development activities as may be required to alleviate poverty, promoting individual and family group centred livelihood, economic development activities and also to mobilise and empower people to speed up the national development. The department also aims to provide micro finance, to develop physical and social infrastructure facilities that may be required for the development of the livelihood of the people. Also, this system aims to create a social security network, a Development Fund, a Revolving Fund and also to provide marketing facilities and setting up marketing centres. An important feature in this concept is the mobilisation of the Divineguma beneficiaries in the planning and management of projects and schemes for their economic upliftment. The system hopes to create an institutional framework for the development of saving habits and granting of loans. One of the aims is to develop self confidence, collective responsibility towards society and develop good qualities and values of Divineguma beneficiaries.

(National Human Rights Action Plan 2013) It is interesting that the National Human Rights Action Plan for the protection and promotion of Human Rights refers to the implementation of Economic Social Rights through the realisation of Mahinda Chinthana Goals. It states that the Mahinda Chinthana Goals envisages large scale infrastructure development initiatives, revitalizing agriculture and domestic enterprises, providing an effective and efficient public service, strengthening state-owned enterprises, promoting private sector and small and medium enterprises and implementing rural development initiatives enabling Sri Lanka to achieve a significant improvement in economic and social indicators.

The role of the Courts is vital in ensuring social and economic rights as highlighted in the Mahinda Chinthana Goals.

The Constitutional Court of South Africa established:

“We are of the view that these rights are, at least to some extent justiciable. As we have stated previously, many of the civil and political rights entrenched in the new constitution will give rise to such implications does not seem to us to be a bar to their justiciability. At the very minimum, socio-economic rights can be negatively protected from improper invasion.

Although both Grootboom and Soobramoney have been criticised for not providing the relief sought by the petitioners, both cases demonstrate that accepting some judicially enforceable social rights did not lead to the judicial excess some had expected.

The Divineguma Judgement delivered by the Supreme Court of Sri Lanka is disappointing. The Supreme Court of Sri Lanka in the above situation looked at the Constitution very narrowly and interpreted the Constitution extremely literally. A Constitution must be read as a whole and the whole Constitution has to be examined without giving undue weight to any part. In *Tasmani v. Commonwealth* on a question as to the meaning of the Australian Commonwealth Justice O'Connor stated: 'I do not think that it can be too strongly stated that our duty in interpreting statute is to declare and administer the law according to the intention expressed in the statute itself. In this respect the Constitution differs in no way from any act of the Commonwealth or of a State.' The Constitution has to be looked at as a whole to see the scope of provisions. It is necessary to consider the context in which a particular provision appears and why it was framed.

Similarly in *James v. Commonwealth of Australia* [1936] AC 518 614 the Privy Council said:

It is true that a Constitution must not be construed in any narrow and pedantic sense. The words used are necessarily general and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the word changes, but the changing circumstances illustrate and illuminate the full import of that meaning.

With regard to the Millennium Goals, Michael Clements and Todd Moss argue that many poor countries, especially those in Africa, will miss the MDGs by a large margin. But neither African inaction nor a lack of aid will necessarily be the reason. Instead, responsibility for near certain 'failure' lies with overly ambitious goals themselves and unrealistic expectations placed on aid. While MDGs may have galvanised activists and encouraged bigger aid budgets, over-reaching brings risk as well. Promising too much leads to disillusionment and can erode the constituency for long term engagement in the developing world.

The MDGs could turn real development success into imaginary failures. Creating targets such as the MDGs may help to rejuvenate this aid debate and energise the development community. But there is also a danger that the MDGs by creating utopian expectations of what can be achieved quickly will create impressions of failure.

It is clear MDGs which promised a more secure, prosperous and better world... for all," has proved itself to be a mirage.

In the year 2005 President Mahinda Rajapakse placed before the Sri Lankan people the Mahinda Chinthana or the Mahinda Vision which was based on suggestions and ideas of people who were associated with him during his political career.

With regard to the creation of a virtuous citizen the recommendations set out in the Lessons Learned and Reconciliation Commission paves the way for supreme qualities such as ethnic and religious tolerance, exposure to diverse religious principles and the provision of peace education at school level.

Judiciary needs to be activist in its approach as in India.

A court could be biased in favour of some rights over other rights. Judges also tend to be biased with regard to their personal outlook towards socio-economics issues. The bias of the court in favour of some rights has to do with the role of the bar itself. The Sri Lankan lawyers have not so far aggressively pushed for adjudication of socio-economic rights and does not seem to draw on the most current trends in international and comparative law. The judgements themselves are often confusing and show a breezy familiarity with international law and do not draw on the experience of some of the most progressive constitutional courts in the world adequately, such as the South African court.

When interpreting the Constitutionality of the Divi Neguma Bill the Supreme Court erred in adopting a literal interpretation of the constitutional provisions. The approach adopted by the Supreme Court reflects the dangerous belief that directive principles are inferior to the fundamental rights enshrined in chapter IV of the constitutional text.

The Supreme Court should profit from the wisdom of P.K.Tripathi who argued that directive principles of state policy do not constitute a set of inferior and subsidiary principles; that they are in fact, by their very origin and history, principles which define and delimit the fundamental rights of the individual on the one hand and a directive principle on the other, it should be presumed that the conflict is apparent and resolvable when the two conflicting rules are properly interpreted, and in the process of interpretation it would be proper and appropriate to remember that the directive principles of state policy embody a set of social principles that came into existence to check the wild extravagance of the fundamental rights of the individual....As time passes our courts and our lawyers will gradually begin to appreciate the value of the directive principles and correspondingly the principles will figure more and more in forensic argument and juristic discussion and they will exert a greater and more adequate Influence on the jurisprudence of this country.

The Way forward for the realisation of the Right to Development and the protection of Economic Social Rights is through indigenous mechanisms and structures. For Human Rights play a complex role in modern Sri Lankan society, values and practice of human rights run counter to centuries-old structures of hierarchy and social and economic oppression and interrogate and challenge the institutions that hinder Lanka's journey out of poverty. They provide the framework for difficult balancing between claims for equality and justice; they mediate in the interactions between ethnic and religious communities and between individuals and groups.

Civil society, the business community, Academia individual citizens have a role to play in placing human rights at the centre of Sri Lankan polity and turn them into a tool for advocacy and an instrument of social justice, of fairness between communities as well as individuals, of protection of the guarantees of the criminal justice process and above all, of strengthening the identity of the Sri Lankan state and society.

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