

Interdependency of tribal rights

Vaishali Bahubalendra^{1*}

^{1*} Assistant Professor Of Law, SOA National Institute of Law, SOA University, Odisha, India

Abstract

Rights being a bundle of interest are vested on individuals for their protection, as the state is under an obligation to protect their rights, this forming the genesis of the social contract theory. Every right has a corresponding duty, we as citizens have fundamental rights and the government has a duty to protect the rights. So far as the theory of capability by Amartya Sen is considered, on losing one thing one loses many others things as well, the meaning of which is if two rights are inextricably connected to each other than on the safeguard of one the other is already taken care or else safeguarding the other right become easy and feasible. On the touch stone of the theory of Capability by Sen, the researcher will conduct a doctrinal study as to interdependency of tribal social, economic and cultural rights with their right to food. The criteria on which interdependency is based will be a guiding light for our policy makers. Taking into purview the various statutes encompassing various rights of tribals the researcher will analyse and try to find out the basis on which the rights have been based, tracing out its connectivity and linkage. As it is very evident that vesting rights alone will not lead to development what is more important is the enforcement of this right. Rights without enforcement are just as Constitution bereft of Constitutionalism.

Introduction

In an welfare state where right of the people plays a pivotal role. Enforcement of these rights helps in raising the standard of living of every human. being be it tribals as well. Human rights in general function to restrain the powerful to restrain the vital interest of the vulnerable. Thus in order to claim something as human right, it is impliedly claiming that everyone, everywhere, and at all times, is in principle vulnerable among us against any threats whenever, wherever they arise. So depending on their vulnerability people require protection.¹ Tribals being different from other human beings because of certain factors like geographical location, illiteracy, lack of facilities(food and healthcare) etc become vulnerable to other people, diseases etc. In such a case their protection has to be specially taken care of. Amartya Sen and Nussbaum have theorized the Capability approach, wherein individual capabilities are increased in order to give them benefit of the government policies and schemes, broadly speaking in enforcing their rights. Raising the capability would basically be making or facilitating an individual to do something which he could not have done. The researcher through this study aims to strike a balance between the Capability approach and the interdependency of rights. When capability is enhanced by aiding the functionings the individual can easily get access to his rights. But by enhancing the capability what has been done, capability is nothing but another right which the person is deprived of. In order to apply the capability approach of Amartya Sen one needs to focus on the concept of rights and their interdependency. The ascertainment of one right facilitates the enforcement or availability of others. So Capability approach under the matrix of interdependency of rights can be implemented in the best possible way.

Review of Literature

- 1. David A. Crocker, Functioning and Capability: The Foundations of Sen's and Nussbaum's Development Ethic:-** In this article the authors have discussed the Capability approach and its various components. A clear understanding of the capability approach and its components can be done vide this article moreover it encompasses the criticism to this approach.
- 2. Carolyne Willow, Children's Rights and the Capability Approach. Challenges and Prospects:** The author vide this article has discussed the capability approach and its effect on rights of children. This highlights the components and prospects of capability approach on children.
- 3. Tribal Rights, Dispossession and the State in Orissa Author(s): Jagannath Ambagudia:** This article encompasses the rights of tribals, basically their land rights and how they are dispossessed of their land. This article has helped the researcher in understanding their land rights.
- 4. On the Indivisibility and Interdependence of Human Rights by Morton Winston:-** This paper has beautifully entailed the indivisible and interdependence nature of Human Rights.

¹ <<https://www.bu.edu/wcp/Papers/Huma/HumaWins.htm>> accessed on 24/7/23

5. Human rights' interdependence and indivisibility: a glance over the human rights to water and sanitation by Priscila Neves-Silva , Giselle Isabele Martins and Léo Helle:- This paper has also beautifully entailed the indivisible and interdependence nature of Human Rights. They have taken a particular instance for proving the indivisibility and interdependency of rights.

6. Elements of a Theory of Human Rights: Amartya Sen:- This article entails the importance of human rights and also political approach to human rights.

a. **The Possibility of Social Choice Author(s): Amartya Sen:-** The author in this article has encompassed some challenges and foundational problems faced by social choice theory as a discipline.

Objective of Research:-The research focuses on understanding the capability approach and its comparison with the interdependency of rights. The nexus between interdependency of tribal rights to that of Capability approach of Sen is the broad objective of the study.

Methodology

In carrying out the research the researcher shall follow doctrinal study, delving into various standpoints of the Capability approach of Amartya Sen and Nussbaum and to understand the interdependency of rights and its nexus with Sen's capability approach.

Discussion

So far as the literature reviewed, there is no such work on considering the capability as nothing but a single right or an amalgamation of bundle of rights which needs to be addressed first for proper enforcement of the right in question.

The Importance of Rights

Human beings from birth have some rights which are attached to them until death. Tribal people are also humans, so they also acquire rights similar to those of other humans. Being citizens of a country they also have many privileges. In a contemporary society state comes to the aid, protection and enforcement of the rights of citizens. Human Rights are those basic conditions which are inherent to nature and on its deprivation one cannot live as human being. These rights and fundamental freedoms allow one to develop fully and use one's human qualities, intelligence, talents and conscience to satisfy one's spiritual, physical, social and other needs. They are intrinsic part of a dignified life of every human being. Rights are principles guiding human conduct and regulating it. Rights are basically a bundle of interest of any individual protected by the state. Rights may be of two kinds:-

Natural rights and legal rights

Natural Rights are rights which are not man-made and artificial. They are rights derived from human nature or from the God. They are applicable to all people. These rights exist in every individual and cannot be taken away. As that of right to life.

Legal rights are based on the societal customs, laws, statute or action by the legislature. Legal rights are sometimes called civil rights or statutory rights.

Rights in strict sense confer a corresponding duty. Some rights confer the liberty on an individual to do something. When liberty is conferred on one person it takes away the right of some other person for example if a person has the liberty to kill someone the person who is killed is deprived of his right while some other rights confer power, with power comes liability. Another category of right is immunity from legal power; immunity implies a complete lack of liability.

Rights of the tribals

Tribe is viewed, developmentally, or historically as a social group existing before the development of Nation States, or outside them. Tribes are a group of distinct people, dependent on their land for livelihood, who are largely self-sufficient, and not integrated into the National Society. There are various tribes all over the world and in India as well. Tribals are human only and they are entitled to all the basic human rights as has been encompassed under Universal declaration of human Rights (UDHR). Tribals not only go by the meaning of the word, are a differently treated or are in many ways vulnerable because of following reasons:-

- Geographical location
- Cultural and language barrier
- Illiteracy

➤ Lack of adaptability etc.

Some of the socio-economic rights applicable for all humans:-

- ‘The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;
- ‘The right to earn enough to provide adequate food and clothing and recreation; ‘
- The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;
- ‘The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;
- ‘The right of every family to a decent home;
- ‘The right to adequate medical care and the opportunity to achieve and enjoy good health;
- ‘The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;
- ‘The right to a good education.²

The above entailed rights are some of the socio economic rights, to be available to every person irrespective of the caste, language, religion, colour etc. So these rights should also be available for the tribals. Various rights are also conferred to the tribals through the Constitution and statutes of a nation, though these are also human rights but additional emphasis is casted on them as fundamental or as a statutory right. Some of the rights guaranteed to tribals in India are:-

Basic safeguards guaranteed by the Indian Constitution:-

Educational and Cultural safeguards:-

- Article 15(4): Special provisions for advancement of other backward classes (inclusive of schedule tribes)
- Article 29: Protection of interest of minorities (inclusive of schedule tribes)
- Article 46: The state shall promote, with special care, the education and economic interests of the weaker sections of the people, and in particular of the schedule caste and schedule tribes, and shall protect them from social injustice.
- Article 350: Right to conserve distinct language, script or culture and instruction in mother tongue.

Social Safeguard

- Article 23: Prohibition of traffic in human beings and beggar and other similar form of forced labour
- Article 24: Forbidding Child Labour

Economic Safeguards:-

- Article 244: Applicability of the fifth schedule for administration and control of the Schedule Areas and Schedule Tribes in any State other than the states of Assam, Meghalaya, Mizoram, and Tripura as the same are especially covered under sixth schedule of the Constitution of India (COI).
- Article 275: Grants in-aid to specified states covered under fifth and the sixth schedule of COI.

Political safeguards:-

- Article 164(1): Entails provisions for Tribal affairs Ministers in Bihar, Madhya Pradesh and Odisha
- Article 330: Reservation of seats for Schedule Tribes in Lok Sabha
- Article 337: Reservation of seats for Schedule Tribes in State Legislatures
- Article 334: 10 years period for reservation (extension has been made several times by amendment)
- Article 371: Special provisions in respect of North Eastern states and Sikkim
- Article 243: Reservation of seats in Panchayats.

Service Safeguards

Under Article 16(4), 16(4A), 164(B), 335, 320(40) Other provisional safeguard in regards to rights of Schedule Tribes in COI

Article 15(4): Promotion of social, economic, and educational interest. This particular article empowers the state to make any special provision for the advancement of socially and educationally backward classes of citizens or of the Schedule Castes and Tribes.

Article 19(5): Safeguard of the Tribal Interests

Special restrictions may be imposed by the state for the protection of the interest of any Schedule Tribe against freedom of movement and residence throughout the territory of India and acquisition and disposition of property guaranteed to every citizen.

Article 23: Human Trafficking

²Socio-Economic Rights as Outlined in US President Franklin D. Roosevelt’s 1944 State of the Union Address

Traffic in human beings; beggar and other similar forms of forced labour are prohibited.

Article 21: Right to life is provided to every person and they cannot be deprived of the same except according to procedure established by law. Right to life under article 21 with the passage has encompassed many other rights within itself as right to food, shelter, health care, clean environment, sleep, die, basic medical facilities and many other rights which are also considered as fundamental rights through various judicial pronouncements by the apex court.

Article 21: Cultural and educational Rights:

This article contemplates of the right of cultural or linguistic minority to conserve its language or culture. The state shall not impose any culture upon the minority own culture.

Capability approach by Amartya Sen and Nussbaum

Capability may be referred to as the ability of an individual to do certain things. But when a human can be said to have capability, which would enable him to have a dignified life. In discussing the capability of an individual for ascertaining its role in social and economic development of the country Sen and Nussbaum have highlighted what they stated "a philosophical and conceptual framework within urgent problems that arise in the course of development, basically economic development". Problems arising in the path of development are both theoretical and practical. Achievement of better life plays a crucial role in development. The citizens are guaranteed some fundamental rights, to make these rights available and protected the state comes up with different policies, herein if we take the example of our Constitution fundamental rights guaranteed under part III are enforced and made available to the citizens by direction laid down in part IV³ of the Constitution. Both the thinkers⁴ have minutely scrutinized the different standpoints of development and their evaluative components. Making policies, generating employment, providing free education and food are some of the means by which the state aims in bringing economic parity and development, but the primary question lies as to whether the citizens have the capability to avail the benefits entailed in a policy of the state.⁵

The normative and empirical development theory

Both the authors while defining development have taken the help of the term "functionings". According to them development finally aims at improving the kinds and quality of life people are living of the humans. So in tot they devised development to be enhancement of certain human functioning and the enrichment of human capabilities to function accordingly. The ethic of development according to both authors must correspond to and has a cordial relation with that of empirical investigation as to what causes and hinders development and what produces and prevents poverty, famine, endemic hunger, exploitation, sexism and other developmental failures. What is the meaning of "deprivation", "well-being", "quality of life", and "development" in relation to humans' means can be clarified by social science with the help of ethics. And for providing the help ethic needs empirical investigation for knowing the practicality, especially to find out what is happening in the world and how the world can be made better and by what means. So by this approach Sen has emphasized the on the importance of empirical approach towards understanding and analysing a problem.

Development of policy and practice

Sen and Nussbaum are concerned not only with the theory of normative⁶ and empirical development theory but with the development of policy and practice. Highlighting his capability approach Sen has put forth an argument that "the object of public action can be seen to be the enhancement of the capability of people to undertake valuable and valued 'doings and beings'". Sen and Dreze identified various means for overcoming entitlement failures and in achieving the "capability" goal of being able to avoid indigenous hunger.

Foundationalism

Sen's and Nussbaum's "foundationalism", then boils down to the questions (and some answers) of classical Greek eudaimonism⁷". These questions were:-

³Directive Principle of State Policy

⁴ Sen and Nussbaum

⁵ David A. Crocker, Functioning and Capability: The Foundations of Sen's and Nussbaum's Development Ethic, 20 POL. THEORY 584 (1992)

⁶Normative theory describes an ideal way for a media system to be controlled and operated by the government, authority, leader and public. These theories are basically different from other communication theories because normative theories of press are not providing any scientific explanations or prediction.

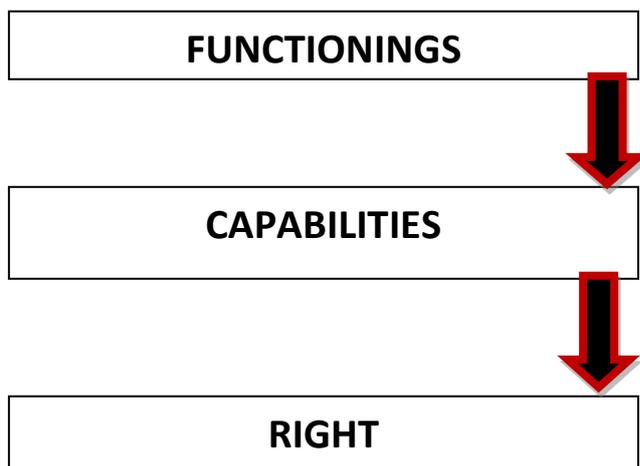
⁷ Eudaimonia sometimes anglicized as eudaemonia or eudemonia is Greek word literally translating to the state or condition of 'good spirit', and which is commonly translated as 'happiness' or 'welfare'.

- How should human beings live their lives?
- What one should mean by human and communal flourishing?
- What sorts of things are intrinsically good for human beings and not just instrumentally valuable?
- Is happiness the ultimate goal or by- product of or some evidence for intrinsic value?
- Are commodities such as income or food intrinsically good or they are only good because they lead to something else and what is that something else?
- What are the bearers of intrinsic values?
- In what ethical space or spaces should we operate?
- Have we come to the end of the line when we talk of meeting certain needs or respecting certain rights?
- Are there ethical categories that are more fundamental?

The method of ethical inquiry proceeds by two related methods. Firstly, social extension of Rawlsian “reflective equilibrium”⁸. Communally and individually we strive for consistency and harmony among our ethical desires and belief. Individuals comes to a realisation is the conception of good that he receives from the society and in what manner he intends to live in the society; the communal agreement is arrived at a result of reciprocal scrutiny and clarification of different proposals. These instances, originating from different communities, consider and help us to reflect on ethical boundaries between humans and Gods, on one hand and between human and beasts, on the other. The other method of ethical inquiry, which is applicable to some but not all ethical principles, is to clarify what general norms are presupposed in this practice of shared critical inquiry.

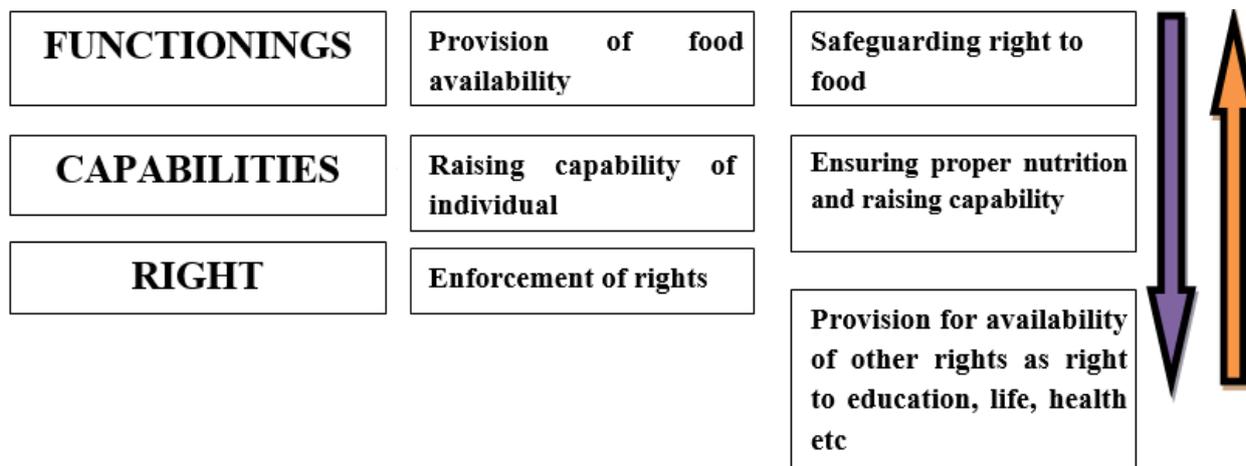
Interdependency of rights and the capability approach

So taking into account the capability approach of Amartya Sen and Nussbaum one thing can certainly be asserted as the outcome of the theory of Capability is that for ascertainment, enforcement of rights and proper implementation of the policies and scheme individual capabilities must be raised. Capabilities can be standard of living, availability of food grains, employment etc. But standard of living, availability of food grains, employment are also rights of individuals. By highlighting these points the researcher want to identify the fact that functioning's under the capability approach are nothing but one kind of right, when one set of rights are safeguarded the enforcement other set of rights becomes easy or possible or the other set of rights are automatically enforced. The relation between interdependency of rights and the capability approach may be diagrammatically represented as follows:-



So if functionings are taken care of then capability increases and right gets enforced easily. Now lets us understand the same by way of examples:-

⁸ Reflective equilibrium is a state of balance or coherence among a set of beliefs arrived at by a process of deliberative mutual adjustment among general principles and particular judgements.



So right to health or life or freedom etc are dependent on various others rights be it fundamental or other human rights. So the capability approach brings a good point of raising the capability of our citizens but capability can only be ascertained if other rights are safeguarded properly. Similarly the rights of tribals as well are interdependent. If we want to raise the standard of life of the tribals there other basic rights have to properly safeguarded.

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