

# Right to Have Rights and its Critical Analysis

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Author of the Book	:	Dr. Yubaraj Sangroula
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*Prof. Sangroula throughout the book has tried to point out that a person should have the first five rights to enjoy any other rights. The whole book focuses on these first five rights which help an individual to come out of deprivation and have a sound vector of life. He has vehemently criticized the neo-liberal policies of the World Bank, which ultimately led to the reduction in the industrial growth of the developing countries like Nepal. Implementation of these neo-liberal policies without understanding the ground realities of the developing countries made a negative impact on the indigenous path to the prosperity of these countries. The World Bank's definition of poverty of including economic factor alone has been criticized by the author and has come to the conclusion that poverty is just a shadow of deprivation which is caused due to the economics as well as socio-political reasons. Prof. Sangroula has also mentioned about the magic played by econometrist through calculation to deceive large population, this he has termed as calculus magic. He gives the example of GDP as the standard for measuring poor or rich is the calculus magic. At last, he discusses the real problems of South Asian countries and the solution to tackle those problems.*

## Introduction

The definition of justice as per Plato, Socrates and Aristotle are not relevant anymore. The utilitarian approach of Jeremy Bentham, rights approach of Immanuel Kant, as well as the virtuous approach of Aristotle, are obsolete, if

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not, at least in this part of the world where society does not believe in binary opposites. The Oriental concept of justice does not opine on principles of justice but on facts of injustice. Injustice can be visible or perceived through the senses like the Nirmala incident of Nepal or the Arushi murder of India. It has both the existence and essence if it is looked through the existentialism philosophy. Justice is measured from its ability to address injustice. Injustice is an objective fact, whereas justice is a perception. John Rawls, in his theory, had propounded the concept of distributive justice and according to it; affirmative action was applied to the United States and many other countries but failed miserably. In light of its drawbacks, Amartya Sen opines on the idea of justice rather than the concept of justice. He is of the view on building the capability of the individuals in regards to productivity, creativity, intellect, and persistence. Simply, he viewed justice to make the individuals capable to make an informed or right choice of preference. Likewise, poverty can also be defined as maximization of the state of deprivation of rights, thus destroying the capability of a person to make an informed or right choice of preference. Amartya Sen, in this regard, said poverty is the absence of capacity to identify preference and making choice. To which, the author opines that the state has to uplift the people from the development threshold through the foundational first five rights and intervene only if the line goes below the threshold line. The author has propounded a new concept of justice, commonly known as, a right to have the first five rights.

### **Approaches of Theory of Justice**

Amartya Sen in his book, 'The Idea of Justice', mentions that there are two approaches to justice: a) The Transcendental Institutionalism Approach, and b) Realization-Focused Comparison Approach.<sup>1</sup> The transcendental institutionalism approach is focused on identifying the perfectly just society but the realization-focused comparison approach focuses on removal of manifest injustice from the world.<sup>2</sup> John Rawl and Contractarian philosophers fall under the advocates of the first approach of justice as they support for the perfectly just society. Amartya Sen, on the other hand, states that he belongs to the second approach of the theory of justice advocating for the removal of injustice from the world rather than demanding for a perfectly just society. This is very true in the case of Prof. Sangroula too, as he focuses on removing injustice rather than advocating for a perfectly just society. Through this, it can be analyzed that he follows the realization-focused comparison approach in dealing with the concept of justice.

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<sup>1</sup> Amartya Sen, *The Idea of Justice*, Penguin Books, Great Britain, 2010, p. 7.

<sup>2</sup> Ibid.

## Defining poverty as a shadow of deprivation

The book views the so-called poverty as a metaphor. Poverty is not a cause but an outcome of deprivation. To address the problem of poverty, the state of deprivation should be addressed. The book discussed three sets of deprivations:

- a) Deprivation of entitlements to livelihood commodities (as said by Amartya Sen) and advantages,
- b) An acute state of social exclusion and
- c) The absence of access to resources and opportunities for development.

The author has defined poverty in many facets, including ‘state of maximization of the lack of capability of enjoying rights’<sup>3</sup>, ‘outcome of state’s corrupt and unethical policies and mechanism’<sup>4</sup>, ‘outcome of perpetrated naked inequality between rich and poor people’<sup>5</sup>, ‘the state of deprivation or denial of rights’<sup>6</sup> and many others. But all these definitions look futile as the author mentions later that poverty is just a metaphor, it is neither a concept nor a substance. He states it as a shadow of deprivation and nothing else; therefore, to tackle poverty, deprivation has to be dealt at first which will immediately remove the poverty. This statement raises a question: if poverty does not exist then why the author defined poverty at first and later mention that it does not exist?

Furthermore, the state of deprivation has two forms: income deprivation and human worth deprivation. From the view of development jurisprudence, a person living in the state of deprivation suffers from the lack of source or foundational rights (Economic, Social and Cultural Rights) as well as output or advanced rights (Civil and Political Rights). The sources of foundational rights are key elements to empower individuals economically and socially whereas the output or advanced rights are enjoyed by individuals to effectively control the state’s tyranny. To resolve the problem of the state of deprivation, States need to intervene. The intervention is broadly classified into two levels-the levels of development threshold, and the level of economic and social prosperity or happiness.

## The all-important first five rights

One of the good aspects of this book is that along with the problems it also

<sup>3</sup> Yubaraj Sangroula, *Right to Have Rights- Theory of Anti-Deprivation Development Threshold: A Critical Discourse on Law and Development*, First Edition, Lex & Juris Publication, Nepal, 2018, p.3.

<sup>4</sup> Ibid, p. 6.

<sup>5</sup> Ibid, p. 7.

<sup>6</sup> Ibid, p.13.

mentions the solutions to tackle those problems. Prof. Sangroula through this book has cited many social problems, and the solution to these problems, for him, are securing the first five rights. The major thrust of this book is to advocate that every individual should be secured of first five rights before securing any other rights. In the words of Prof. Sangroula, these first five rights ‘establish a bridge between human development and the enforcement of human rights’<sup>7</sup> and they ‘establish a threshold for development for the vector of life adequate living’<sup>8</sup>. For this, the author has developed the development threshold, which can be established by recognition and protection of five rights, defined as the first rights and they are as follows:

- a) The right to the inviolability of physical integrity (the society must protect each individual from all kinds of violence- ahimsa)
- b) The right to the inviolability of personal autonomy of individual or personhood- worth of a person (the society must protect each individual from all kinds of inhuman and degrading treatment- ahimsa and maryada)
- c) The right to the freedom of choice of profession and style of life (ahimsa and maryada)
- d) The right to basic supplies such as health service and social security (the education being the most fundamental one- arogyata and gyan, however, the author has not specified what kind of education is adequate and to be made accessible. )
- e) The right to participate or involve in economic enterprises (the state must either offer resources or skills or jobs)

One of the major tools to realize these rights is education. The interventions necessary for lifting people from the state of deprivations are not charities of the government- they are rights of the people unjustly deprived by some people enjoying the powers.

### **Development as the right of people**

The most striking statement that we found in this book is: Development is the ‘right of people but not the privilege of the State’<sup>9</sup>. Prof. Sangroula has rightly pointed out that development is not the discretion of government but it is the right of people to enjoy. He defines development as ‘a process of improving the quality of life by positively stimulating change in the associated elements

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<sup>7</sup> Ibid, p. 29.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid, p. 89.

of the vector of life<sup>10</sup>. The main reason in the words of Prof. Sangroula for the failure of development in developing countries is the transplantation of laws and policies from developed countries. He repeatedly mentions that the development process should be contextually used by developing countries and it should be indigenous to the values they hold. We can take some positive development strategies used by South Asian countries as our own indigenous methods. For example, the community forest modality of Nepal, the Amul cooperative method of developing dairy farming of India, organic farming etc.

The author discussed the functional development objective theory as the development of infrastructure, establishing markets for access of people for their commodities, and social development investment so that individuals are motivated to do their tasks more efficiently. One critical example could be making access to the market for farmers by building roads most alike the Chinese development path. The objectively functional theory of justice, on the other hand, puts stress on purposive and methodological approach with regard to the context and objectives to be addressed. The author dubbed calculus magic or statistical puzzles to the conventional poverty-line theory, that is, data produced by the quantification of the poverty threshold line to \$1.25 because it was contradictory, assumptive and grossly an outcome of the tyranny of experts, as viewed by William Easterly.

### **State as the main perpetrator behind caste-based discrimination**

The social exclusion of Dalits from society has created various problems in society and one of the major problems is the conversion of religion to Christianity. The caste-based discrimination which exists in India and Nepal has been deeply rooted in the society even today but people often neglect to see the history to understand the real problem at that time. Prof. Sangroula has pointed out that caste-based discrimination was institutionalized by the British colonial government in India through the Criminal Tribe Act, 1841. It defined people who are regarded as so-called low-caste people, Ahirs, Shudras, Gujaras, and others as the criminal. This law highly influenced rulers of Nepal which resulted in the adoption of Muluki Ain, which again institutionalized the caste-based discrimination in Nepal. Prof. Sangroula argues that an individual cannot affect the legal position of other people without the consent of the government, which has the ultimate power to enforce laws. Therefore, the state is the real perpetrator behind the caste-based discrimination.

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<sup>10</sup> Ibid, p. 38.

## Theories of justice

Prof. Sangroula has mentioned various theories of justice in this book. The Inducement Theory, as similar to appeasement theory, concerns the materialistic welfare of the poor people for a certain time being. For example: cooking oil for school enrolment. Assimilation Theory of Justice helps to foster a policy of integration of the minorities or excluded groups in the mainstream population. It merges the identity of a minority with the majority, thereby ending the cultural, linguistic and other attributes of the minority group. The Equality or Non-discrimination Theory emphasizes the notion of equality in the human worth of every individual on equal footing; however, the social structure which gives rise to the state of discrimination is not a subject-matter of this theory. For example, simply guaranteeing the right to equality to Dalits may ensure their equal constitutional status, but however, in reality, it fails to bring about significant changes in their lives. Critical Theory of Justice emphasizes a rights-based analysis of discrimination and subordination. It does not limit itself to the task of interpretation of law alone; rather it uses other sciences for understanding causes, outcomes, and impacts of the denial or violation, or deprivation of the first rights.

In this backdrop, the author criticizes these theories and develops his own theory named Anti- Deprivation Development Threshold Theory which opts for the advancement over the threshold to uplift from the deprivation through the five rights. It presupposes recognition and protection of the five first rights as a demarcation line between deprivation and threshold of development. If an individual is secured with the first five rights, then it is said he/she crossed the development threshold and has a sound vector of life. This theory calls for the following method of analysis as a tool for establishing an objective condition of the state of deprivation:

- a) the principle of economic analysis of law as said by Robert Posner
- b) the principle of legal interpretation of economic activities

The author indicates that it is the responsibility of government to help its citizens to cross the development threshold. Here, law plays an important role in meeting this threshold as it is the law which secures the first five rights and ultimately in the words of Prof. Sangroula, removes the injustice.

## Failure of democracy in south asian countries

The South Asian countries have failed to exercise the essence of democracy due to various reasons, with one being huge expenditure on the military budget.

South Asia represents the fifth biggest military budget in the world<sup>11</sup> but on the other side, it also dwells 43% of the poor people of the world. Prof. Sangroula opines the kleptocratic nature of the governments in South Asia. The statistics of poor people residing in the South Asian countries could be improved drastically if the budget spent on the military could have been spent on developing the capability of poor people. The military expenditure by South Asian countries helps western countries like America to ultimately benefit from the arms trade as America alone accounts for around 1/3<sup>rd</sup> (33.33%) of total global arms sale.<sup>12</sup>

Another reason for the failure of South Asian countries to exercise the essence of democracy is the rampant corruption in South Asian countries leading to the criminalization of politics. For example, in India, about 40 percent of law-makers are criminally booked.<sup>13</sup> The author also discussed the suffering of Bangladesh from an acute interface between the state of deprivation dynamics and unfavorable agro-ecological and climatic environment, inflation in Pakistan, and calculus magic related to the poverty status in Nepal. These problems have led to increment in the gap between rich and poor. The rich person is becoming more richer and the poor becoming poorer. Therefore, this gap has to be reduced and equal opportunities should be ensured by the states to its entire citizen.

### **Problem with the solutions**

The author has given solutions to all of the problems which are mentioned in the book. This is the good side of this book but there are problems within the solutions itself. The solution for many problems is to promote education and building the capability to interact with and compete in the market. Though it is an important aspect to address the problem of people, it has become rhetoric in the book. The author mentions that the solution to pre-natal nutritional deficiencies is promoting education and building the capability to interact with and compete in the market.<sup>14</sup> He proposes long term solutions but gives less importance to short-term solutions. The solution for pre-natal nutritional deficiencies could be related to giving free health service to those people but the author focuses on long term solutions only.

He rightly mentions about educating people to build the capacity, but he never mentions what kind of education. The education should also include moral

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<sup>11</sup> Ibid, p. 143.

<sup>12</sup> Al Jazeera, 'The 10 countries that export the most major weapons', Al Jazeera (22 February 2018) available at <https://www.aljazeera.com/indepth/interactive/2017/02/10-countries-export-major-weapons-170220170539801.html>, accessed on 17 December 2018.

<sup>13</sup> Sangroula (n 3), p. 135.

<sup>14</sup> Ibid, p. 158.



teachings, education to love the nation and work in the nation itself. Therefore, he needs to give special emphasis on the features of education also.

## **Conclusion**

This book will make a huge contribution to the field of law, economics, and development. The book concludes that no law can have an efficient interface with development unless it carries the indigenous legal concept. The state of deprivation and social exclusion should be addressed by recognizing and protecting the first rights constituting the development thresholds of individuals. The author has propounded a theory with a blend of capitalism and socialism, whereby, the development threshold being the demarcation point. The author's theory is based on the grounded theory research of the local village. One of the good aspects of this book is that it has tried to simplify the understanding of the theory by giving contextual examples which makes people easy to understand. The author bases his theory on Foucault notion of deconstructionism which departs from conventional poverty-line theory. He views this poverty-line theory as 'eagle's eye science' contrary to 'toad's eye science'. The five rights can be analyzed through cultural theory. Though human life and dignity is an individualistic concept in the West, the state has to intervene so that it could be egalitarian social solidarity. The author has tried to strike a balance between law, justice, and development. This book has been an attempt to build a new approach focusing the five rights which are primarily responsible to build the capability of a person to enjoy other rights- which justifies the title of the book 'Right to Have Rights'. At last, the readers would undoubtedly suggest this book to the individuals interested in law, economics, and development.