

Book Review

Revisiting *Development as Freedom* vis-à-vis the Right to Mobility

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Development as Freedom

by Amartya Sen. New York: Anchor Books. (2000) 366 pages

Development as freedom has been propagated by Nobel Laureate Amartya Sen (Sen, 2000) who wrote a book with the same title. Sen's book, *Development as Freedom* tackles economic, political, and civil rights in general. But, it is not explicit about the freedom of mobility. Freedom of mobility is one of the fundamental freedoms. And, in this age of globalization and migration, freedom of movement has become a development issue. Migrant rights advocates have been advancing the rights of migrant workers in general but have not been explicit in advancing the right to mobility beyond the borders of nation-states. Governments of sending countries are also trying to protect the rights of their workers overseas. But, the fact is, one nation-state cannot impose its own laws on another nation-state. The United Nations Development Program Human Development Report 2009 used 'development as freedom' as a framework (United Nations Development Program, 2009) even if Sen is silent on mobility, migration, and cross-border labor migration.

This engagement with Sen on *development as freedom* in relation to cross border mobility uses discourse analysis. In the concept of discourse, “meaning” is neither objective, given nor neutral. It is frequently contested and contradictory as well as embedded in complex social processes. Discourse analysis, therefore, is a study of how meanings are produced and which meanings prevail in society (Clegg and Bailey 2008). This examination of the dominant discourse on mobility hopes to contribute to the advocacy of *enlarging people’s choices* (Sen, 2000) and *expanding people’s freedom* (Sen, 2000) in this age of globalization, specifically in relation to the right of workers to cross national borders.

Development as Freedom

Sen’s book has been lauded and quoted by writers and development practitioners alike. But, easy reading it is not. The author tends to be verbose, describing concepts and ideologies in a philosophical way. Simple though the language of the book may be, it is not meant for beginners in development studies. One must have some grounding on the different paradigms, development issues, and even development discourses to fully grasp and fully appreciate the whole book. S/he has to read between the lines, behind the lines and even beyond the lines. Sen transposes the concept of development into the philosophical plane, then brings it into the material plane by inserting some historical data to illustrate his point. This style of writing is a mark of Sen who, as an economic philosopher, questions all kinds of fundamentalisms without directly attacking them. “*Development as freedom*,” both as a book and as an idea, is a gift to the discursive space. In his preface, Sen presents the aim of the book, i.e. “*this book is presented mainly for open deliberation and critical scrutiny. I have, throughout my life, avoided giving advice to the ‘authorities.’ Indeed, I have never counseled any government, preferring to place my suggestions and critiques- for what they are worth-in the public domain*” (p.xiv).

Development as freedom is premised on the liberal philosophy which puts primacy on individual freedoms. Within this framework, Sen advances the capability approach to development. Poverty is seen as the deprivation of

capability. This means that people are poor because of the constraints to their personal agency to develop themselves. Though he puts primacy on individual freedom and wellbeing, Sen does not preclude the role of government in laying out the necessary foundations and mechanisms for enhancing one's freedom. He acknowledges the importance of markets but is critical of the unfettered market. He argues that, *"(I)t is hard to think that any process of substantial development can do without very extensive use of markets, but that does not preclude the role of social support, public regulation, or statecraft when they can enrich – rather than impoverish-human lives"* (p. 7).

Sen explains that the different kinds of freedoms, e.g., political, economic, and social, are interrelated and reinforce one another. Freedoms are both the ends and the means of development. When he posits "poverty as capability deprivation", he draws the reader's attention to the so-called social determinants of poverty. He takes to task welfare economists who look at poverty only in terms of income. People are poor, according to him, because they are deprived of the freedom to access education, seek employment or access health care either through culturally constructed social exclusion or deficiencies in social policies. Economists, he asserts, are too concerned with efficiency, neglecting the equity aspect.

Sen's concept of capability is something that should be cultivated by enhancing the social environment. He argues that, *"(C)ombining extensive use of markets with the development of social opportunities must be seen as a part of a still broader comprehensive approach that also emphasizes freedoms of other kinds (democratic rights, security guarantees, opportunities of cooperation and so on).... the identification of different instrumental freedoms (such as economic entitlements, democratic freedoms, social opportunities, transparency guarantees and protective security is based on the recognition of their respective roles as well as their complementarities"* (p.127).

Sen espouses human capability rather than human capital. For him, the human person should not just be viewed as a capital to enhance production. Rather, the human person should be valued as a person.

Development as Freedom vis-a-vis Mobility

It is worth noting that Sen discusses economic freedom extensively, relating it to political and social freedom. But, he is silent on freedom of mobility. This glossing over of mobility as a fundamental freedom that enhances a person's capability may be due to the fact that Sen's context was the nation-state. Mobility is not seen as problematic within a nation state; it is a given. In this age of globalization, however, *freedom* has also assumed a global dimension. There is, therefore, a need to broaden the analysis of *development as freedom* beyond the boundaries of the nation state.

Development as freedom, together with the capability approach, can be made operational beyond the context of the nation-state, as gleaned from important statements in the book, to wit:

- *"Social arrangements may be decisively important in securing and expanding the freedom of the individual. Individual freedoms are influenced, on one side, by the social safeguarding of liberties, tolerance, and the possibility of exchange and transactions."* (pp. 41-42)
- *"Development can be seen....as a process of expanding the real freedom that people enjoy."* (Introduction)
- *Development as a "friendly process" in contrast to the "toughness and discipline" of some states...* (p. 35)
- *Expanding/enhancement of human freedom* (pp. 3, 36, 37, 41, 53)
- *Advancing freedom of other types* (p.3)

Mobiity and International Covenants

If Sen explains *development as freedom* as a philosophical treatise, the United Nations (UN) General Assembly instituted fundamental freedoms and

rights of human beings through the different International Human Rights Instruments. This section looks into the way the UN instruments frame the concepts of *mobility*, *work/labour* and *migration*. The linkage of “human rights” and “development as freedom” enrich their advocacy component because, according to Gasper (2004) “*(T)he capability/capabilities approach offers justifications for specific human rights, and also must work through such legal instruments.*”

A review of the International Bill of Human Rights (United Nations, 1988) is included here since it embodies the fundamental freedoms and rights of human beings. Although the Bill is composed of four documents, it is taken as one because it is believed that human rights are indivisible.

If Sen discusses *freedoms* from an abstract plane, the International Bill of Human Rights sets the standards for the fulfillment of freedoms; and through its Covenants, transforms the standards into a force of law for those who ratify them. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families which entered into force on July 1, 2003, is also reviewed. The Migrant Workers’ Convention is considered as the principal human rights instruments for the protection and advancing the human rights of migrant workers and their families.

Review of Particular Provisions of International Human Rights Documents

On Mobility

HUMAN RIGHTS INSTRUMENTS	PROVISIONS	REMARKS
Universal Declaration on Human Right (UDHR)	Art.13: 1. Everyone has the right to freedom of movement and residence within the borders of each state. 2. Everyone has the right to leave any country, including his own, and return to his country	The assumption here is that the right to mobility is accorded to every citizen of the nation-state. Freedom of mobility includes leaving one's own country. This, however, does not guarantee that one will be accepted in the country of destination.
	Art. 28. Everyone is entitled to a social and international order in which the right and freedoms set forth in this Declaration can be fully realized.	This provision is part of the last three provisions of the UDHR, a visionary provision which, as early as 1948, already foresaw the emergence of an international order. It has been used by human rights advocates in lobbying for the recognition of human rights of irregular migrant workers.
International Covenant on Civil and Political Rights	Art. 12.1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedom of others, and are consistent with the other rights recognized in the present Covenant. 4. No one shall be arbitrarily deprived of the right to enter his own country. Art. 13. An alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.	This is a reiteration of Art.13 of the UDHR. Article 12.2 provides freedom to leave one's country but does not give assurance that one will be accepted in the destination country. Art 12.3, however, provides for restrictions on mobility due to the reasons outlined in the provision. Art. 13 provides for the expulsion of an alien provided proper procedures are observed.

HUMAN RIGHTS INSTRUMENTS	PROVISIONS	REMARKS
International Covenant on the Protection of the Rights of All Migrant Workers and Members of their Families	<p>Article 5. For the purpose of the present Convention, migrant workers and members of their families:</p> <p>a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State OF Employment pursuant to the law of that state and to international agreements to which that State is a party.</p> <p>b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.</p> <p>Article 8.</p> <p>1.) Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.</p> <p>2.) Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.</p>	<p>The International Covenant on the Protection of the Rights of All Migrant Workers and their Families, an instrument considered to be the MAGNA CARTA of Migrant Workers does not deviate from the conventional way of looking at freedom of mobility. It echoes the conventional statements in the International Bill of Human Rights which state the <i>freedom to remain, leave and return to one's country of origin</i> but does not mention the right to enter and remain in another country. Article 5 explicitly states that entry to a country other than one's own should be in accordance with the laws of that country. This shows that even if the Migrant Workers Convention articulates the other human rights of migrant workers, it still follows the Westphalian state/citizenship framework in terms of looking at <i>mobility</i>.</p>

On Work/Labor

HUMAN RIGHTS INSTRUMENT	PROVISIONS	REMARKS
Universal Declaration on Human Rights	Art.23.1 Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.	This provision does not explicitly state the domain of the application of the rights. However, in actual practice, this has been confined within the borders of the nation state.
International Covenant on Economic, Social and Cultural Rights	Art.6.1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.	Since States Parties are explicitly mentioned, it is assumed that they provide the opportunities to enable persons to work. Art. 6 actually lays out concepts akin to the capability approach espoused by Sen. In this provision, the substantive freedom to choose one's work is explicit.
International Covenant on Civil and Political Rights	Art. 2.1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. 2. No one shall be held in servitude. 3. a) No one shall be required to perform forced or compulsory labour.	This provision is clear about the domain of the application of rights. It has been used by migrant rights advocates in calling the attention of receiving countries and employers in receiving countries to address the appalling conditions of semi-skilled and unskilled migrant workers.

On Irregular Labor Migration

HUMAN RIGHTS INSTRUMENT	PROVISIONS	REMARKS
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	Art. 68.1. States Parties, including states of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation.	The provisions assume that irregular migration is bad; therefore, it should be contained and managed. While enshrining the human rights of migrant workers and their families in countries of employment, the Convention fails to question and challenge the dominant discourse of mobility, i.e. mobility within the confines of the borders of one's own nation-state.

Conclusion

Migrant workers contribute to both countries of origin and destination. Governments, especially of destination countries, should recognize their economic and socio-cultural contributions and adopt measures to protect and advance their human rights, including the right to mobility. Stringent cross border laws do not decrease migration. Rather, they lead to the flourishing of the illegal recruitment trade. Illegal recruitment and human trafficking generate up billions of dollars annually. Enhancing cross border mobility, especially among countries within the same regions or countries sharing borders, will hopefully diminish these illicit trades; hence, desperate migrant workers need not seek help from illegal recruiters.

Even if mobility is one of the fundamental freedoms, cross border mobility is governed by stringent laws. Liberalization of services in the age of globalization and mobility favor professionals and skilled workers. Unskilled and semi skilled workers, who, among others, have the most reasons to migrate and are actually economically needed by destination countries, are often unable to meet the strict requirements of immigration.

This engagement concludes that even if the conceptual domain of Sen's "development as freedom" is set within the border of a nation-state, "development as freedom" as a concept has the potential to expand freedom of mobility beyond national borders as advanced by the UNDP 2009 Human Development Report. Freedom of mobility across national borders, though, demands political will, at least among regional conglomerations (International Organization of Migration, 2007). Ironically, the most often quoted documents by migrant right advocates, the documents which supposedly advance human rights of migrant workers are framed in the dominant discourse of mobility, a discourse which confines mobility within the borders of the nation-state.

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