A. Problem Profile

The advent of an International organization like United Nations was one the greatest moments in the history of human civilization which was established after the Second World War. During the Second World War the human race witnessed unprecedented violations of human rights and therefore when the world body was established, the protection and promotion of human rights was one of the important objectives of United Nations. To achieve this objective the world body wanted to have some universal principles of human rights which could take care of all kinds of human rights in an integrated and comprehensive manner. These aspirations saw the light of the day when Universal Declaration of Human Rights was adopted on 10 December 1948. At that time, the idea was to project the unity of concept of human rights. But since then the international community is also divided on the very idea of ‘what constitutes human rights?’ At that very moment the politics of human rights began at the international level and the concept of human rights was projected narrowly by various groups in accordance with their own perception of human rights. Broadly the world was divided into two groups. One gave preference to civil and political rights while the other vouched for social, economic and cultural rights. This politics of cold war prevented the desired result. Instead of one unified covenant, two separate covenants were
adopted in 1966 - one on civil and political rights and other on economic, social and cultural rights.¹

It is in this backdrop, the world community primarily engaged with the civil and political notion of human rights. And social, economic and cultural rights took a back seat for a while since the politics of human rights was dominated by those who preferred civil and political rights over social, economic and cultural rights. However, it should not go unnoticed that human rights discourse remained parallel to the development discourse, which also originated at about the same time – after the second world war; but by and large primarily focus sed on economic development and to a lesser extent on socio-cultural issues.² It can be observed that human rights and human development historically evolved parallel to each other and initially remained on non-intersecting tracks.³ Therefore it can be said that the time for idea of human rights approach to development had not yet arrived.⁴

The convergence of human rights and development at the level of concepts can be noticed somewhere in 1970’s, when a group of nations led by developing countries asserted their right to development in the prevailing international economic order, which they believed to be unjust and responsible for their under-development. They put forward their demand for the inclusion of right to development as an integral part of universal human rights by unifying the civil and political rights on one hand and economic, social and cultural rights on the other. These aspirations of

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² Ibid.
⁴ Supra note 1 at 111.
developing countries emerged in consolidated a form in the shape of a demand for a New International Economic Order (NIEO). The intention of the main protagonists (developing nations) of NIEO was to set up a mechanism, so that they can claim co-operation and assistance of developed nations in their economic development. However, the confrontationist mode adopted by developed (also referred to as North) as well as developing nations (also referred to as South) proved to be an obstacle in the acceptance of the idea of right to development as a part of the human rights. But when this sharpness of North–South confrontation diluted with the passage of time the demand for the right to development reincarnated itself once again in 1980s along with other movements that were already on going for the unification of civil and political rights with economic, social and cultural rights.

All the above aspirations culminated in the general assembly when, in a landmark event on 4th December, 1986, the General assembly adopted new human rights in the declaration on the right to development. The right to development had been in gestation since at least 1981 when the commission on human rights established a working group of 15 governmental experts. This Commission received various substantial inputs from nongovernmental organizations too.5

The right to development is one of the most highly debated and contentious issues in international relations. Since the 1970s when the issue first featured on the agenda of international community, the debate over right to development has continued unabated but with little progress towards consensus on the concept and the method of

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its implementation.\textsuperscript{6} The extent of controversy regarding the right to development can be judged from remarks made by Jack Donnelly who is a professor of political science at the university of North Carolina. He made the following remarks:\textsuperscript{7}

A philosopher is a person who goes into a dark room on a moonless night to look for a nonexistent black cat. A theologian comes out claiming to have found the cat. A human rights lawyer, after such an onsite visit, sends a communication to the Commission on Human Rights; and a member of the Commission leaves the room drafting a resolution on the treatment of black cats. This, in a nut shell, is uncomfortably close to the history of the so-called human right to development.

However, in spite of all these controversies and placed in interface between human rights and development, the concept of right to development seeks to promote development as human right. Nevertheless, political differences have prevented the identification of exact contours of the definition and implementation of right to development.\textsuperscript{8} In recent years work has been initiated at international fora such as United Nations High Commission for Human Rights towards identifying the content of right to development. To achieve this objective, open - ended working groups and Human Rights Commission have deliberated on reports submitted by the Independent Expert on the right to development who was appointed

\begin{itemize}
  \item \textsuperscript{6} Centre for Development and Human Rights, \textit{The Right to Development: A Primer}, 16 (2004).
  \item \textsuperscript{7} Jack Donnelly, “In Search Of The Unicorn; The Jurisprudence of The Right To Development”, \textit{California Western International Law Journal, Vol. 15}, 473-509 at 473 (1985).
  \item \textsuperscript{8} \textit{Supra} note 6.
\end{itemize}
by United Nation in 1999. It is pertinent to note here that the declaration on the right to development has not yet been converted into a treaty which is a clear indicator that the nations are not legally bound to adhere to the principles included in the declaration. But the very adoption of the declaration on the right to development and its reconfirmation as a human right in many subsequent international declarations creates a moral obligation on the nations to implement it. At the same time nations have ratified treaties on separate categories of rights; they have also made legal by binding commitments to implement all those rights that constitute the right to development. Moreover, Arjun Sengupta the Independent Expert appointed by UN has identified some of the essential components which are indispensable to the right to development. He identified the right to food, right to education and right to health as those essential components of development right. The independent expert emphasized the fact that human rights are interdependent and indivisible. However, societies can set priorities while implementing the right to development and can prefer one component over the others according to their particular needs.

Although, after the enactment of the declaration on the right to developments it has been discussed in many international conferences and academic seminars and some progress has been made in crystallizing the concept of the right to development, yet as mentioned above, that the constituent rights of right to development are very important. Simultaneously, substantial progress has been made in the direction of implementation of the component rights nationally and internationally.

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9 Ibid.  
10 Supra note 1 at 111.  
11 Ibid.  
12 Ibid.
As far as the implementation of right to development and its constituent rights in India is concerned, it is pertinent to mention here that although the Government of India remained an active crusader for this declaration13 and it has been vocal for this right at international forum and getting it enforced against developed nations14 yet India’s track record at domestic level has not been that impressive. Nevertheless recently some major steps have been taken for the implementation of right based approach to development in India. But at the same time India is also going through various kinds of social, political and economic transition where the process and patterns of development are being regularly questioned. It is true that in the era of globalization India cannot remain aloof from globalization as well as the process of development but there are also various instances of public resistance. Many people are gearing up against the so-called models of development.15 In these circumstances, where India being a developing country needs development; but in this process it will have to ensure that this development is based on a right based approach to development and it adheres to all the principles of right to development.

The right to development describes the process of development and emphasizes on the participation of the people in the process of development. NGOs are playing a very crucial role in the implementation of the component rights of the right to development in India and abroad. In this connection the role NGOs can be examined.

From the above discussion it is apparent that various challenges lie ahead for the declaration of right to development at a

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11 Supra note 5 at 23.
12 As a claim of developing nation against the developed nations for development assistance.
13 See: Venketsh Ramkrishan, “The great land grab” in Frontline at 4, June 17, 2011.
conceptual level as well as in its practical implementation, nationally as well as internationally.

B. Objectives of Research

The objectives of this research work is to explore the relevance of human development to human rights discourse by examining the philosophical, legal, political and economic dimension of the concept of right to development as human right and to establish the missing links\textsuperscript{16} between the human rights and human development. As the consensus, which, emerged during Vienna Convention was that all-human rights are indivisible, interdependent and interrelated. Therefore focusing on its individual component for the purpose of achieving human development, whole ignoring other would not serve the purpose. Human rights functions in a systematic way because the human rights involve are so interrelated that progress on some right is difficult, if not impossible without progress in the system as a whole.\textsuperscript{17} But the wide field of the subject demands to limit the area of research and despite the fact that the human rights philosophy does not permit either a prioritisation of human rights or trade-off between human rights, a conflict between different rights are inevitable many a times. In the light of above statement, this research would be focusing on the essential components of right to development. The main objects of this research are as follows:

- To study the evolution of the concept of the Right to Development.
- To find the interlinkages between the discourse of human rights and human development.

\textsuperscript{16} Supra note 6 at 10.
\textsuperscript{17} Supra note 3 at 25.
To develop an understanding of human rights dimension of human development.

To study international legal framework and international development in the context of right to development.

To identify the essential components of rights to development and to examine the progress made in the direction of realization of these essential components of rights to development.

To study the impacts of economic globalization on the right to development.

To study the Indian response to right to development and to explore all constitutional, legislative, executive and judicial tools which can be used for the realization of right to development in the real sense.

To study the relationship between the right to development and sustainable development.

To study the role of NGO’s in the implementation of right to development.

C. Research Hypothesis

This research is based on the hypothesis that although the world community has reached a consensus that right to development is a human right, at the same time there are still underlying conflicts and contradiction regarding the nature of right to development. Claim of right to development as a basic human right has been challenged at the level of its philosophical foundation. Generally the following arguments are advance to confront the idea that right to development is a human right:
• Human rights are individual rights.
• The right holders must have some corresponding duty holders.
• Human rights are justiciable.

With the changing nature of human rights discourse it would be unjust to leave these controversy unanswered. The present status of right to development still creates doubts in minds especially at the level of enforcement and justifiability. It is required to find an answer for these doubts through constitutional, legislative, executive and judicial means. Although right to development is internationally accepted as a human right, yet this should not signify the end of further development or expansion of the concept. If one accepts that the mechanism of human right is one of many ways to realize human well being it is necessary to constantly re-conceptualize human right in order to make them less flawed and more universal.

D. Research Methodology

The methodology, which is going to be adopted for the present research work, will mainly be on doctrinal analysis, i.e., based on theoretical sources. Taking into the account the interdisciplinary nature of the subject, it is proposed that material be collected from various disciplines of social science like economics, sociology, philosophy and law etc. It is also pertinent to mention that the research will heavily rely on documents of various international and national organizations, provision of national legislation, journals and judicial pronouncements. Looking into the nature of the subject some data will be used to support various arguments from secondary sources.
E. Review of Literature

As far as the existing literature is concerned, it would be pertinent to mention here that there is no dearth of research materials on two major parts of the present research topic i.e. Human Rights Jurisprudence and the Human development and its various components like right to food, right to health and right to education as well as on sustainable development. Not only the academicians but people from different walks of life have written a lot on all these issues separately and explored the human rights angle of a specific component. But at the same time it is also important here to reveal that in comparison to above mentioned scholarship, there are limited scholars who have directly ventured or explored this research area i.e. Human Rights Jurisprudence and Right to Development. The very interface of the concept of human rights jurisprudence with the concept of human development in general and the right to development in particular makes this research topic very unique and a challenging task. In this part, effort has been made to scan some existing literature on the research topic and its various components with a purpose to have an overview of previous works on the research topic and to examine their importance for the present work.

The basic literature for this research work from where basic information can be gathered on this concept can be “The right to development: a Primer”, the book published by Centre for Development and Human Right an organization established by Professor Arjun Sengupta who was also an Independent Expert on the Right to Development at United Nations. In this book various aspect of right to development have explored in the preface of the book Arjun Sengupta observes “the Right to development is one of the most highly debated and contentious issues in International relations. Since 1970, when the issue first featured on the agenda of the
international community, the debate over right to development has continued unabated but with little progress towards the consensus on the concept or its method of implementation. Placed in the interface between human rights and development, the concept of right to development seeks to promote development as a ‘Human Right’.

While expressing his views on the issue professor Upendra Baxi observes that “The United Nations declaration on the right of peoples and states to development has attracted varieties of human right faith and skepticism. It has been hailed as ‘the alpha and omega of human rights, the first and the last human right, the beginning and the end, the means and the goal of human right’ on the other hand, a cynical perspective insists that right to development will divert attention from the pressing issue of human dignity and freedom”.

Throwing light on the right based approach to development Peter Uvin observes that “A higher level of integration, on however, a new paradigm of right based development is emerging among certain agencies. At this level, development and rights become different but inseparable aspect of the same process, as if different strands of the same fabric. The boundaries between human rights and development disappear and both become conceptually and operationally inseparable parts of the same process of social change”.

Throwing light on the nature and content of declaration on the right to development, Russel Lawrence Barsh observes as follows:

“Since the Senegalese jurist Keba M’baye first advanced it in 1972, the idea of the “right to development” has been the focus of an
extensive but largely theoretical debate. Jurists from the South enumerated the possible subjects and objects of this right, while jurists from the North questioned whether it existed at all. The adoption by the UN General Assembly of a Declaration on the Right to Development (DRTD) did little to resolve such questions. On the contrary, the artfully vague text of the DRTD attracted new jurisprudential speculations. It could easily have been doubted that the declaration would ever have any practical applications. Like the New International Economic Order, it was an expression of South frustration in the face of intransigent North power, but seemed to lack a workable program”.21

While commenting on the basic need approach to development Frances Stewart comment as follows:

“The failure of the economic and social system to achieve a basic minimum condition of life for hundreds of millions of people in the third world has led to widespread recognition of the need to give primacy to securing universal access to basic social and economic goods and services. This recognition has been shared by economists, philosophers, and advocates of international human rights, but each have proceeded separately to develop conceptual frameworks and policy mechanisms to achieve the same or similar goals. In the latter part of the 1970s, development economists adopted a “basic needs” approach to development, largely as a response to the failure of economic growth to alleviate poverty in many developing countries. The objectives of the economists' basic needs approach were similar to the conclusion of John Rawls' philosophical system that everyone should have access to “basic social goods”. Simultaneously, in a parallel and complementary development, international human rights

access to basic needs goods were recognized first in the International Covenant on Economic, Social and Cultural Rights (1966) and subsequently as part of the Declaration on the Right to Development (1986)."  

Expressing his views on relationship between human rights and human development, M. G. Kaladharan Nayar observes that:

"Human rights and economic development are two central themes of the United Nations Charter. They are distinct but related concepts. It has been customary to treat human rights and economic development independently of each other; scant attention has been paid to their interdependence, but the problem of their interaction is rapidly increasing in importance. Certain critical questions that concern both developing countries and donors of development assistance are: What is the place of human rights in economic development? Are human rights merely the end of economic development, or are they also its means? Can they be progressively realized simultaneously?"  

While commenting on the contribution of Independent Expert, Laure-Hélène Piron:

"The debates surrounding the RTD are concentrated in the UN human rights arena, and remain highly politicised between Northern and Southern governments. In particular, agreements reached in the various development for a are not always replicated at the Commission on Human Rights. The Independent Expert on the Right to Development has made positive contributions to the debate. His proposal for a “development compact” needs to be given serious

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consideration as it may lead to a politically acceptable solution. The "compact" may need to be further defined in a manner consistent with current best practice, or presented as a theoretical framework to guide real partnership agreements".24

At the same time Melik Özden commented that what is the importance of right to development in International Law and he observed as follows:

"The Declaration on the Right to Development constitutes an international instrument of primary importance, for it asserts the right to development as a human right in all its dimensions and unequivocally clarifies the principles that should regulate international relations, all in a spirit of equality and mutual respect tending toward its full realization. It emphasizes collective rights, the right of peoples to choose their own development model, and insists on international cooperation among countries, a cooperation which is not reduced to simple international aid, even though such aid may be deemed "essential" (Art. 4, §2). In this regard, it constitutes, overall and along with the corpus of human rights instruments, a further instrument for peoples in the struggle against neoliberalism".25

Robert McCorquodale and Richard Fairbrother express their views regarding opportunities and dangers created by globalization. They express their views in following words:

"The apparent universal market and demand for a product, which is created and presented by the use of new communication technologies and produced by a transnational corporation, could be

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seen as a manifestation of new opportunities provided by globalization for all people after the end of the Cold War. At the same time, the impacts of the universal market on diverse cultures and on state sovereignty, as well as the pervasiveness of development measured in market terms, could indicate the dangers in this process of globalization. These opportunities and dangers arise because globalization is “an economic, political, social, and ideological phenomenon which carries with it unanticipated, often contradictory and polarizing consequences”.26

While commenting on trade liberalization and market expansion, Daniel Aguirre observes as follows:

“Globalization entrenches trade liberalization and market expansion. The establishment of the world Trade Organization through the Uruguay Round of the General Agreement on tariffs and Trade Solidified this regime. The Uruguay round created a legal framework for legal framework for liberalization in trade-related aspects of intellectual property and trade in services. This increased the enforcement power of the regime through the establishment of a sophisticated dispute settlement process. Centralized international Planning and decision making, for example via the United Nation, is no longer possible in the economic sphere”.27

Describing the relationship between development and democracies, Rebecca Eapen observes as follows: “Development and democracy do not need to have a trade off relationship. An environment of globalization often offers no choice to states that may want to pursue what they deem is best for the people. It almost seems

like the world is caught in a trap of its own making and everybody is feeling the repercussions".28

Expressing on the right to food Jean Dreze observes as follows:

"Right to food is considered as one of the indispensable components of the right to development expressing his view on the right to food in India. Jean Dreze observes as follows: ‘The right to food can be seen from at least three different perspectives. One is the perspective of Indian constitution, including the directive principle of state policy. Secondly, we can refer to international declarations and correction on this matter, starting with the universal declaration of human rights. Thirdly, it is possible to argue for the right to food’.29

According to the researcher of Centre for Development and Human Rights observes that:

“The right to development is considered to be an interface between civil and political rights and economic, social and cultural rights. The right to education works like a catalyst which enhances enjoyment of all other human rights. It is widely held to be an empowerment right that enables a person to control the benefits derived from other rights. It has been pointed out that the solution to many human rights problems lies in recognizing that right to education is the key for unlocking other human rights. Denial of

education may lead to exclusion from many levels such as labour, markets, political representation and social security schemes”.

Expressing Benjamin Mason Meier view on health and development as follows:

“The theoretical integration of the right to health within the right to development is a broader understanding of the empirical relationship between development and health. High rates of absolute poverty and inequality within states have a profoundly negative impact on underlying determinants of health, affecting the health of entire populations. While development policies that reduce poverty and inequality have resulted in unparalleled improvements in public health, development policies that either

- increase the number of people living in absolute poverty,
- widen the degree of inequality, or
- weaken public health systems are strongly associated with negative health outcomes”.

According to Shewli Kumar expressed his views on the sustainable development and the right to development as follows:

“It is important to locate the current debates on ‘economic growth’ and ‘sustainable development’. According to Peet development differs from economic growth in that it pays attention to the conditions of production, for example, the environments affected by economic activity, and to the social consequences, for example, income distribution and human welfare. He goes on to expand that development entails human emancipation, one by use of science and

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30 Supra note 6 at 102.
technology to liberate from vicissitudes of nature and two self emancipation through control over social relations. In both senses development entails economic, social and cultural progress, finer ethical ideals and higher moral values”. 32

Highlighting the importance of NGO in the implementation of the right to development professor Arjun Sengupta observes that “The NGOs have much to contribute in the building up of that pressure. To act as agents of social change, the NGOs may have to adjust their behaviour significantly from the role that many of them currently play as the so-called 'development NGOs' as agents to deliver the programmes supported by international agencies and national governments. They may not be a part of the political machinery, but they have to be involved with generating political consciousness, because no enduring social change will be possible without that. Keeping these identities separate would be difficult, but in that would lay the strength of the NGOs with the image of disinterest in political power but dedicated to social change. They can still act as agents for delivering development, but with the full participation of the beneficiaries with transparency and accountability and for programmes to promote equity and social justice. With the new approach to the right to development, agencies for development are also agencies for human rights, playing both the roles of activism and of advocacy””. 33

In all these available literature the ideas related human right jurisprudence and the right to development have been discussed and it has explored the various dimension of the issue but still there are


lots of controversies and obscurity about the whole idea of human right jurisprudence and right to development, therefore it is important that they are discussed and debated at various forums including in academia so that the grey areas on this concept can be clarified and crystallized.

F. Universe of Study

The research area confines to the discourse on United Nations “Declaration on the Right to Development (1986)” and its indispensable components rights which claims their status as human rights under international law. The specific theme of the research “Human Rights Jurisprudence and Right to Development” intends to analyze development regarding “the right to development” and its component rights at international level. At the same time also proposes to explore the related development in India.

G. Plan of the Study

The study has been planned and divided in various chapters as described below:

Chapter I – Introduction – This chapter gives the introduction of the topic, its problem profile, object of study, research methodology, and review of literature and universe of study.

Chapter II - Human Rights Jurisprudence and Right to Development – This chapter talks about the concept of right to development and its interface with contemporary issues. In this very chapter the evolution and nature of the concept of the right to development as well as controversies regarding this has also been examined.

Chapter III - Right to Development in the Era of Economic Globalization – Under this chapter it has been examined that how the
right based approach to development has affected in the process of economic globalization. Under the same chapter the promises and discontent of globalization in the context of right to development have been highlighted in international and national scenario. It has also been highlighted that how various components rights of the right to development like right to food, education and health are affected in the process of globalization.

Chapter IV - Right to Food as an Indispensable Component of Right to Development – Under this theme the relationship between right to food and right to development along with the social justice have been examined. The chapter also refers briefly to international concern about the right to food. This chapter further investigates the issue of food security in India and throws the light on the activisms regarding this by the judiciary as well as civil society in India.

Chapter V - Right to Education as an Indispensable Component of Right to Development – In this chapter it is shown that how right to education is one of the key components of right to development and it plays an important role in the implementation of right to development. This chapter also throws light on the right to education movement and its outcome in India.

Chapter VI - Right to Health as an Indispensable Component of Right to Development – In this chapter the theme examines and deliberate that how the issue of public health is important and how it is connected to the issue of development. The chapter also examines that how market is and privatization of the health sector which is not based on right based approach to development is negatively affecting the issue of public health. The chapter also highlights the issue of public health in India and related legal provision.

Chapter VII - Right to Development and Sustainable development: some issues - in this chapter the relationship between
the concept of right to development and sustainable development has been examined along with the principle of the sustainable development. This chapter also scrutinizes the role of judiciary in the implementation of principles of sustainable development in India.

Chapter VIII - Right to Development: People’s Participation and the role of NGOs – under this chapter the role of NGO’s and people’s participation in the process of right to development has been explored.

Chapter IX – Conclusion and Suggestions. - Finally in this chapter the whole research has been summarized and concluded. At last some suggestions have been made regarding the fundamental aspirations of realizing the right to development as a human right.