CHAPTER II
HUMAN RIGHTS JURISPRUDENCE AND RIGHT TO DEVELOPMENT

A. Introduction

In recent academic debates there has been resurgence of content and issues of human rights and its jurisprudence, which can be catalogued and traced in claims of modernity and enlightenment project of Europe. In Europe, development and human dignity constitute the fundamental core about rights on the one hand and on the other it envisages the possibilities of human emancipation from the clutches of theological and metaphysical domination of various kinds. Though there is no fix language through which these claims are being articulated but common denominator is the language of humanism. Therefore, there is need to understand various departures in making and (un)making of humanist language of natural rights and its inbuilt naturalism that is informed by legal positivism and moral universe of abstract humanism where natural rights are considered to be presuppositions of any good and justice-oriented society. Here one might draw insights from Kant's political writings specifically his thesis on cosmopolitanism and Hobbes, Locke and Rousseau's social contract theories where these thinkers and proponents of modernity articulate different charters of human rights through which claims about human individual are located with in the domain of state and at the same time individual gets an expression as universal, autonomous individual self. However, these claims get problimatized in the context of civil society and in the formation of public sphere. Thus in this chapter an effort has been made to understand the nuances of

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Human rights jurisprudence on the one hand and how it is related with the right to development.

In order to define and explain the various theoretical and other contributing factors for human rights jurisprudence, it is needed to explain what the core elements create a context for human rights jurisprudence. There are two important developments within the annals of human rights which have given birth to these debates, the first relates to how positivist jurisprudence of human rights has been replaced by normative human rights jurisprudence. Thus it constitutes a debate on right to development because these claims cannot be substantiated in the absence of democracy and democracy along with its core values such as equality, justice, rights and fundamental liberties which are the defining markers of development. And development becomes a barometer of particular society's upward and downward social change or social and political transformation. Moreover, right to development and human rights discourse are not of recent origin. Rather the historical connection are being traced in social contract theoretical traditions and in the archives of rights debate from 18th century onwards but it became an issue of contestation and fertile academic deliberations in late 20th century, specifically in fettering out the uneven international political and socio-economic order, thus it also questions the manner in which different charters of human rights and international covenants are constructed and a consensus has been manufactured in favour of developed countries.

Another important connection pertaining to this debate relates with issues of human rights jurisprudence and how it is mediated by actors of civil society and a critical academics and policy makers who have tried to offer development as a significant makers of human freedom and rights both. And this kind of scholarship with in
the domains of law and social sciences and beyond, maintain a counter hegemonic discourse of rights and its relation with multiple kinds of deprivation, discrimination and a sense of marginality. Therefore, in this chapter an attempt has been made to spell out the historical trajectory of human rights jurisprudence and how it creates a context of right to development. In other words it tries to capture an argument about making of right to development a core context of human rights jurisprudence. However, roots and routes to this framework of analysis are of inter-disciplinary nature. Thus it makes an effort to break the conventional mode of enquiry and it takes insights from law, human rights archives and social sciences to evaluate the efficacy of arguments about human rights jurisprudence and right to development.

B. Tracing the conceptual and contemporary connections

(a) Human Rights: Development and Basic needs

Regardless of unparalleled increase in overall opulence the contemporary world denies basic freedom to huge numbers possibly even the bulk of population. After many decades of development people are rediscovering the obvious that people are both the means and the end of the economic development and world has started giving importance to human rights in the matter of human development. It was with adoption of universal declaration of human rights in 1948, for the first time in history the world acknowledged human rights as a global responsibility but the consensus regarding the unity of the human rights was broken in 1950 with the spread of cold war. The international community debated the idea behind right to development quite extensively for several decades before reaching

to an agreement. The right to development, considered as a significant milestone in the intellectual history of human rights at the United Nations, arose out of contentious global debates about the meaning of economic justice.5

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,6 this transformed situation was also recognized by the developing countries and they also asserted against an international order which was not based on the principle of equity. A society which cannot meet some basic economic and social needs will always run the risk of the political rights of its citizens being eroded or extinguished. There are a large number of Third World countries in which the cenial of human rights by authoritarian regimes has consistently accompanied by a low level of development; people have been brutally exploited and denied minimum basic economic subsistence. Therefore, as a theoretical proposition, it has to be stressed that the development strategy of the Third World countries should guarantee certain basic economic needs and also be consistent in guaranteeing political and legal rights.7

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(b) Right to Development: Claims and Contexts

Most of the time the civil and political rights i.e., first generation human rights occupy the centre stage in any academic debate regarding human rights. But slowly and gradually various other claims were also pressing for their recognition and protection as human rights. That is how the second and third generation human rights have now became the part and parcel of human rights universe. The right to development is also one of the species of third generation human rights. One of such quest, for recognition also reflects in the writings of Shashi Throor. He has also shown his concern in the following words:

"The idea that human rights could be ensured merely by the states not interfering with individual freedom cannot survive confrontation with a billion hungry, deprived, illiterate and jobless human being around the globe. Human rights in one memorable phrase start with breakfast. For the sake of the deprived, the notion of human rights has to be positive, active one, not just protection from the state but also the protection of the state, to permit these human beings to fulfill the basic aspirations of growth and development that are frustrated by poverty and scare resources. We have to accept that the social deprivation and economic exploitation are just as evil as political oppression or racial persecution. This calls for a more profound approach to both human rights and to
development. Without development, human rights could not be truly universal".8

As society undergoes change, so the concept of social justice can not remain static one based on abstract philosophical postulates; it has a certain quality of relativity and indeterminacy. In practice, justice-not being an absolute a priori concept, but rather a method of response to a given situation-must be discovered anew every time when confronted with a concrete situation. This involves the problem of balancing values, guided by considerations of good faith and reasonableness, and with the utmost possible detachment and objectivity.9 The relationship between human rights and development is far too complex, varied, and sometimes inconsistent to be subject to a few neat generalizations.10 There is growing support for the idea that global poverty is an insult to human rights, and that the realization of human rights for a life of freedom and dignity is undeniably a central purpose of development. Yet the right to development remains a politically divisive issue,11 the ‘rights’ discourse is rather fresh add-ons to the development glossary. For decades, the development enterprise lived in perfect isolation, if not ignorance, of the human-rights system and its implications for development. During the 1990s this began to change, for three main reasons. The first was the end of the Cold War, which opened the door to greater missionary zeal. The second was the manifest failure of structural adjustment programmes, which came to be seen as

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10 Supra note 7 at 11.

caused by a lack of government accountability and prompted a major push for good governance and democracy. And thirdly, development thinkers always seek to redefine development as being about more than economic growth. By the end of the 1990s, both the PowerPoint presenters and the dirty-fingernails folk had converged around some acceptance that human rights ought to play a larger role in development. But quite what role and what this might mean for the development enterprise itself, has remained both vague and contested.12

Prior to that even development economist in the latter part of the 1970s 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).13 The Right to Development is a relatively new human rights concept. Its content, nature and status are still contested by academic scholars, and the intergovernmental process aiming to reach a political consensus on its meaning and practical interpretation is highly politicized.14 The academic and inter-governmental processes have so far failed to agree upon a meaning around which consensus could be built, and

13 Supra note 6 at 347.
which would allow development practitioners to focus on the implementation of the right in development policy and practice.\textsuperscript{15} The right to development is often a misunderstood idea in the academic as well as political circle. This misconception has been there because of many reasons but the main reason for this confusion and the complexities is the different perspective given to it due to different political ideologies of developing and developed states. But somehow the concept is gaining grounds because of the following reasons. First, the focus of the development strategies was on equity, poverty alleviation and accountability. These strategies of development are usually articulated without any explicit reference to human rights. The second is the push for various approaches to integrate human rights into development or to apply human rights based approach to development. And the third is the explicit concern for promoting clarifying and implementing the right to development as such.\textsuperscript{16} The reservations held by both practitioners and theorists in both the human rights and development communities reflect not only the lack of communication between the two but also the fact that the existing literature is thin. The links between human rights and development have only recently begun to receive broad attention. The human rights field has historically focused more on civil and political rights than on economic, social, and cultural rights, while the development field has focused on economic growth rather than on a more holistic conception of human progress, and has carefully left out human rights as political and ideological issues that should not influence policy analysis. These trends have begun to change in the last two decades and much useful work has emerged on both fronts. Nonetheless, more work is needed to develop and clarify the concepts.

\textsuperscript{15} Id. at 7.

of the right to development as well as the human rights-based approach to development.\textsuperscript{17}

The fact that the development strategies of the last two decades have failed to give benefits of development to the poor people has led to a search for alternative strategies. One of the strategies suggested is called the basic needs or the minimum needs strategy as referred earlier also. What have been included in it are areas or sectors which are structural in nature and as a consequence of this, one requires pondering over on human investment at both macro and micro levels. At the same time it emphasizes that economic indicators cannot subsume the holistic content of development because it contains social and other indicators as well. The policy makers should create an environment so that the passive citizens should be able to participate actively in the economy. A variety of reasons have been offered for this kind of minimum needs program. First, the minimum needs program should be able to prepare underprivileged, undernourished, and uneducated persons to enter active employment. Second, since employment generation may take some time, these programs amount to a salvage operation for a very large number of people, a guarantee for them to live as human beings at subsistence level. The third justification for the minimum needs program is for the removal of social poverty as distinguished from economic poverty. In the final analysis, social poverty can be removed only if economic poverty is eliminated. However, if all the three rights are guaranteed in a reasonable degree, there is no reason why both human rights and proper development cannot go together. Making basic needs into human rights adds two elements to the basic need approach. It increases the moral weight of and political commitment to their fulfillment and it gives basic needs fulfillment some international legal status. Keeping the above argument in mind,

\textsuperscript{17} Supra note 11.
the inclusion of development approach in the human rights discourse enhances its prospects and becomes more vibrant and dynamic in nature. At the extremes there are no problems: if everyone is healthy, educated, and enjoying levels of living well above standards that seem appropriate, basic needs are being met, and if significant numbers are dying of starvation then development related markers of human rights are not adhered to, thus it lacks coherence and becomes only prophetic. But most cases are less extreme and more difficult to solve: poor societies where people are malnourished but not starving and have some but very limited access to health and other essential services, or rich societies where there is no sign of actual malnutrition and everyone goes to elementary school but where sections of society are not meeting some of their needs at all (e.g., no work, no shelter) with other people's needs being met at standards which might be considered unacceptably low by the standards of that society. The full life would seem generally to be the objective that people wish to fulfill in a basic needs approach since other aspects are for the most part instrumental to the achievement of this full life rather than wanted in them. For example, what is wanted is health, not access to doctors; education, not access to schools; good nutrition, not access to certain quantities of food.

(c) Rethinking about Economic growth as marker of Development: National and International contexts

Traditionally or to say in the immediate post cold war era it was assumed that economic development is a historical process that takes place in almost all the society characterized by, economic

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18 Recently starvation deaths have been reported in India from various nooks and corners of the country, despite the fact that Indian economy is doing very well. See reports: “SC panel asks Orissa govt to feed the hungry”, *The Hindu*, Bhubaneswar, January 24, 2010, “Hunger kills”, *Hard news*, 16 Dec 2010 India http://www.hardnewsmedia.com/2010/06/3577, “India: Starvation deaths ongoing due to administrative neglect” available at http://www.alrc.net/doc/mainfile.php/hrc/7/469. Supra note 6 at 352.

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growth construction of infrastructure, expansion of industry and increased production, consumption of goods and services.\textsuperscript{20} The influence of that study was such that it was argued by the economists of that era\textsuperscript{21} that economies evolved from traditional society to a centralized nation state to the take off stage where there is a sufficient human and financial capital technology for growth to become normal condition and then to maturity and finally high mass consumption. But since then much water has flown below the bridge and this approach regarding the development have been challenged that development is exclusively matter of economic growth and increase in gross national product.\textsuperscript{22} Due to challenge and pressure from various quarters there emerged new kind of approaches regarding development which were radically different from previous approaches, rather it was a shift from economic growth to social development or from human resource development to human welfare based development. Because of these policy makers and the stakeholders have shifted to more holistic, equity and poverty based strategies. The policies have became more coherent coupled with humanistic values and involved concepts of the right to development. Human capital and human resource focused on human beings as a means to increase income and wealth as inputs to increasing production. The human welfare approach considers human being as beneficiaries rather than participants in the development process.

The Right to Development was interpreted by some as creating an international legal obligation on the part of developed countries to provide development assistance to developing countries. Such a legally binding obligation is rejected by developed countries, and this approach was not supported by an analysis of the status of the

\textsuperscript{20} \textit{Supra} note 16 at 22.

\textsuperscript{21} Particularly by Walt Whitman Rostow (1916-2003), the American Economic Historian, who discussed about the stages of economic development in 1960.

\textsuperscript{22} \textit{Supra} note 16 at 23.
Right to Development under international law. Though the Right to Development has been one of the contested concepts among political and academic debates, the debates in connections with right to development and its possible interpretations can shed some new light on international development policy and practices. Consequently, Right to Development debate should be taken seriously to capture its legal and academic imports. The justification given for this comes from the fact that at the practical level, there appears a gap between the United Nations human rights standard-setting processes and current development theorizations.

Decisions reached in United Nations arena can be important, such as the 1990s series of World Conferences, and new human rights norms and commitments can influence international development policies. Development agencies should therefore be more involved in the United Nations human rights debates as they relate to international development policies and approaches. They should make sure that human rights discussions take into account the consensus reached in development arenas, and should also identify ways in which human rights debates can inform development policy and practice. This is especially important for agencies promoting rights-based approaches, this discussion is also important from the point of view that it can be helpful in throwing some new light on the issue in or which can contribute in the ongoing debate on in a constructive manner in capturing the broad parameters and how these have informed the discussion and academic engagements among academic community and policy makers and for the sake of elaboration these points can be understood in the following ways:

23 Supra note 14 at 5.
24 Id. at 6.
25 Ibid.
• The nature of “mutual commitments and shared responsibilities” in a Partnership approach to development.

• The practical impact of human rights-based approaches to development, including distinguishing between human rights as an inspirational force and their function in facilitating the use of legal norms, and judicial, administrative or political enforcement mechanisms.

• The impact of globalisation on the realisation of human rights and the responsibilities of non-state actors, including international agencies; and other important groups and non-party political formations also known as civil society actors.

• How to enhance the accountability of governments and donors to the beneficiaries of development assistance.

(d) Understanding the pathways to Human Rights and Development: Convergences and Divergences

The idea of convergence of development and human rights has been the matter of discussion on various forums for some time now. And by the late 70’s it has been one of the most important agendas for creating a critical consciousness about the very core of development paradigm for third world nation-states, but by the early 2000s a new paradigm emerged. In this connection, the rhetoric of development got new articulations from the framework of substantive debates those include rights but from capability perspective, thus, one can say that rhetoric and polemics of development have been toned down and moved towards the issues of real life situations and multiple predicaments of human existence itself. Development comes to be re-defined in terms that include human rights as a constitutive
part: all worthwhile processes of social change are simultaneously rights-based and economically grounded, and should be conceived of in such terms. Without doubt the most referred-to reflections on this new paradigm are found in Amartya Sen’s ‘Development as Freedom’, in which he defines development as the expansion of capabilities or substantive human freedoms, ‘the capacity to lead the kind of life he or she has reason to value’.26 He argues for the removal of major factors that limit freedom, defining them as ‘poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or over-activity of repressive states’.27 Sen treats freedom as simultaneously instrumental, constitutive, and constructive for development, setting out the deep mutually constitutive links that exist between these two concepts and domains in ways that make their inseparability clear. With Amartya Sen as their champion, these ideas have made great inroads in international development discourses.

In order to further elaborate debate concerning development and its intrinsic relation with human freedom and rights, one need to critically examine the claims about rights on the one hand and its consequences for inclusive development on the other. The convergence of human rights and human development that had evolved historically on parallel and non-intersecting terms in the final decades of the 20th century has recently been acknowledged.28 The integration of human rights standards and principles, both in the process and outcome of development interventions, is reflected in the, ‘human rights based approach to development’. Under this

Supra note 2 at 87.
Id. at 3.
approach, human rights standards and principles as provided for international law, should underscore development process at all levels, and development should be aimed at furthering human rights. The tools of development economic growth, technical assistance and any policies and programmes are meant to play an instrumental role designed to further the realization of human rights. This increasing interaction between human rights and human development has been indicated in Human Development Report 2000, as it has been aptly observed and enlisted by A.K. Shiva Kumar that human rights and human development “share a common vision and a common purpose to secure the freedom, well-being and dignity of all people everywhere. To secure:

- Freedom from discrimination – by gender, race, ethnicity, national origin or religion.
- Freedom from want – to enjoy a decent standard of living.
- Freedom to develop and realize one’s human potential.
- Freedom from fear – of threats to personal security, from torture, arbitrary arrest and other violent acts.
- Freedom from injustice and violations of the rule of law.
- Freedom of thought and speech and to participate in decision-making and form associations.
- Freedom for decent work – without exploitation.

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Thus one notices that A.K. Shiva Kumar has catalogued the major components freedom and rights based equities to articulate the inclusive aspects of right to development but still it needs further analysis to make it more nuanced and dynamic and to capture the substantive issues pertaining to human rights jurisprudence and right to development.

With the changing global political order, issues of human rights and human development once again have acquired attention throughout the world. Its importance has been recognized and underlined by various international organizations and world bodies like the United Nations. The issue is hotly debated at different forums by persons of different calibers and field. Dr. Justice A.S Anand (retired), former Chairperson, National Human Rights Commission of India has called for a paradigm shift from “Human Development” as seen in terms of “Economic Development to Human Development” as a basic Human rights. In his speech on Right to Development at the first session of United Nations Human Rights Council in Geneva on 27th June 2006, Justice Anand asked the Council to move towards bringing the rights perspective on the center stage in the debate over equality of opportunities. He said that universality of Human Rights demand eradication of global inequality and to achieve this importance of right to development has to be emphasized. He further stressed that the aim of human rights is to empower the people through human development.31

There is a close relationship between right to development and human right, the removal of poverty and insuring basic needs to the vast majority of people is a must before they can think of becoming a part of political democracy and enjoy civil and political rights as

their basic human right. The Norwegian Nobel Committee has also acknowledged the importance of right to development as a human right or relationship between human rights and human development. While announcing the Nobel peace prize of 2006, the committee made the following observation:

The Norwegian Nobel Committee has decided to award peace prize 2006, divided into two equal parts, to Muhammad Yunus and Gramin Bank for their effort to create economic and social development from below. Lasting peace cannot be achieved unless a large population group finds ways in which to break out of the poverty. Micro credit is one such means. Development from below also serves to advance the democracy and human rights.32

The above observations gives sufficient insight into the issue that how in the present scenario with what degree of seriousness the issue of human rights and right to development is being taken nationally and internationally.

The human rights discourse and development discourse emerged simultaneously after the Second World War but there was little in common between the two.33 As it is generally understood, the development and human rights belongs to two entirely different domains. As far as development is concerned, it is a general notion that development is something about economic growth and material well being. While human rights are more about protection of human beings from exploitation.

33 Supra note 16 at 43.
While the human rights literature has to a large extent, focused exclusively on political and civil liberty, the human development approach so far had not gone beyond socio-economic concerns. Human development report 2000, however, asserts that an adequate conception of human development cannot ignore the importance of political liberty and democratic freedom.34

Till recent times, the development enterprise lived in splendid isolation from human rights world. Doing something about human right was considered the job of human rights organization, or possibly the foreign policy establishment but not of the development workers; they vaccinated, built schools, disseminated new agricultural techniques and advised ministries. Human rights were important surely but clearly somebody else’s job. The attitude prevails the other way round as well; human rights practitioners have remained largely agnostic towards matters of development and social equity.35

The interaction between United Nations Human Rights Machinery and the United Nations Development Machinery were essentially non-existence.36 The right to development responds to three overlapping but previously non-intersecting trends in development and human rights: Firstly, 21st century development strategy will focus on equity, poverty alleviation and accountability. These ingredients of development strategies are usually articulated without an explicit reference to human rights; Secondly, push for various approaches to integrate human rights into development or to apply human rights based approach to development. The United Nations High Commissioner for Human Rights explain, essentially, a rights-based approach integrate the norms, standards and principles

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36 Ibid.
of international human rights into plans, policies and process of development. And lastly, the explicit concern for promoting, clarifying and implementing the right to development as such.37

The right to development approach, while incorporating elements of other human rights approaches to development, is distinct. It views ‘development’ i.e., a particular process of improvement of well being and expansion of freedom as human right. It links development with human rights by placing human person at the center of development and asserting that the elimination of violation of human rights is a necessary part of development.38

When human development and human rights advance together, they reinforced one another expending people’s capabilities and protecting their freedom.39 Therefore it becomes important to have a clear understanding of what the two concepts- human development and human rights- mean and it is also required to examine their commonalities and there differences. It can be done under the following headings:

(d.1) How integration of concept of human rights into human development enhances the value of human development.40 This question can be answered as follows:-

(d.1.1) Insistence on claim - To have a particular right is to have a claim on other people or institutions that they should help or celebrate in ensuring access to some freedom. This insistence on claim on others...

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37 Supra note 16 at 22.
38 Supra note 13 at 12.
39 Supra note 4 at 2.
40 Id. at 21.
takes us beyond the idea of human development.

(d.1.2) Insistence on duties-It links the human development approach to the idea that others have duties to facilitate and enhance human development and it also ensures accountability, culpability and responsibility.

(d.2) How integration of concept of human development into human rights enhances the value of human rights.\textsuperscript{41} This question can be answered as follows:-

(d.2.1) Helpful in quantification of progress in human rights: The tradition of articulation and definiteness in the analysis of human development can prove very helpful in quantifying the various components of human rights which are abstract in nature otherwise.

(d.2.2) Helpful in policy choice: Scarcity of resources and institutional constraint often require us to prioritize concern for securing different rights for the purposes of policy choice. Human development analysis helps to solve this problem in its own unique way.

(e) Re-reading the United Nations Charter through the Lenses of Human Rights and Development

\textsuperscript{41} \textit{Ibid.}
Under the United Nations Charter, state parties recognised that human rights are a subject of international, and not just domestic, concern. As a result, since the Second World War, an international human rights framework has been developed, providing the United Nations with the legal authority to codify human rights, to create mechanisms to clarify the nature of states obligations and to monitor their fulfillment. The right to development represents dialectic of world order and the sovereign equality of states. All states strive to be equally free and independent, yet this can realistically be achieved only within a framework of global physical security. At first, efforts to achieve world order focused on decolonization and peacekeeping. The number of United Nations member states more than doubled as a growing number of country attained formal independence.

The 1960s witnessed a transition in which the adequacy of formal independence was increasingly questioned. Beginning with the first United Nations Conference on Trade and Development in 1964, poorer countries have made the case that sovereign equality is meaningless without a more equitable distribution of the world's economic resources. Southern initiatives to redistribute economic power have explored different multilateral channels, including trade regulation and, most recently, financial negotiations over “structural adjustment”. With the exception of United Nations Conference on Trade and Development’s Agreement on the Common Fund for Commodities in 1980, however, these initiatives have been thwarted by western industrial powers, who blame corrupt regimes and poor planning for continuing and, in the case of Africa, worsening poverty in the South. The question of human rights enters the picture as a cogent potential argument for structural change. The Declaration on Right to Development regards human rights as both a condition and

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42 Supra note 14 at 7.
objective of development; its aim was to respond to concerns regarding the existence of serious obstacles to development, as well as to the complete fulfillment of human beings and of peoples, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights.43

All states share responsibility for creating conditions, through international cooperation and development policies, for the full realization of human rights in developing countries. The North therefore shares responsibility for human rights shortcomings in the South. Thus, a legal basis is offered for “solidarity” that is, shared responsibility, as opposed merely to “cooperation in international relations. Solidarity has a respectable foundation in the Universal Declaration of Human Rights, which recognizes the right of everyone to “a social and inter-national order in which the rights and freedoms set forth in this Declaration can be fully realized”. Neither the Universal Declaration nor the Declaration on Right to Development specifies the nature of the international order that is required. It would necessarily have to be more democratic, however, in the sense of all states enjoying effective self-determination, equal access to resources and economic opportunities, and an equal role in macroeconomic decision making. At the same time, there is a correlative duty of all states to democratize national institutions. The phrase used by the Declaration on Right to Development is “active, free and meaningful participation”. This is linked to two other important concepts, “equality of opportunity in access to basic resources” and “fair distribution of income”, which may be considered conditions for the effective exercise of democratic rights.44

44 Id. at 326.
The purpose of the Charter to promote human rights and fundamental freedoms is coupled with its economic and social development objectives. The Organic Character of the International Bill of Human Rights and its link with the United Nations Charter, the theme of human rights is a recurrent feature of the United Nations Charter; the Charter refers to human rights in its preamble and in six different articles. The words “a common understanding of these rights and freedoms” suggest that the Declaration was intended to be a definition or interpretation of the term “human rights and fundamental freedoms” as used in the Charter. In the scheme of the United Nations Charter, human rights and economic development are distinct but closely related concepts. The preamble of the Charter states that the people of the United Nations are determined “to employ international machinery for the promotion of the economic and social advancement of all peoples” in order to accomplish, among other things, the reaffirmation of “faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women”. The preamble thus links “economic and social advancement” with “fundamental human rights”; the former has been described as a means to the realization of the latter. Significantly, every article of the Charter containing a reference to human rights also makes a reference to the economic and social aspects of those rights.

The inclusion of Article 55, which deals with human rights in the Chapter on International Economic and Social Cooperation, is

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45 Since the United Nations was established after the second world war and therefore it seems that till late 1960 the world institution was very much occupied world peace agenda and little bit around the protection and promotion of human rights but it was heavily tilted towards civil and political rights because of so many reasons which was not purely legal in nature. But some how the word community very soon realized its folly and it focused towards economic development.

46 Supra note 9 at 62.

47 Id. at 65.

48 Ibid.
especially significant. The article states that the United Nations shall promote certain objectives with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. The objectives specified include: higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social and related problems; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 55 thus clearly establishes the nexus of human rights and economic development as twin foundations of peaceful and friendly relations among nations. The close relationship between economic and social development has been emphasized in several decisions of the United Nations organs.

The United Nations is also a leading institution in the domain of development policy and practice: Its legitimacy in the eyes of developing countries derives from the fact that they are given equal representation, and can press for reforms of the international

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45 The General Assembly in 1952 expressed the view that "action to promote social development and technical assistance in social matters should go hand in hand with action to promote economic development and technical assistance in economic matters". Again, in a resolution adopted in 1959 the General Assembly stated that "economic development and social development are interrelated". The Economic and Social Council in July 1959 decided to amend the terms of reference of the Economic Commission for Asia and the Far East and of the Economic Commission for Latin America to include the social aspects of economic development and the interrelationship of the economic and social factors. Further, in a 1959 resolution titled "Social Aspects of Economic Development", the Economic and Social Council "[u]rges States Members of the United Nations to consider the social implications at all stages of economic planning and development". The promotion of universal respect for and observance of, human rights and fundamental freedoms is a social matter in the design of the Charter. Thus, it is the Economic and Social Council which, under the authority of the General Assembly, bears the responsibility for the functions of the United Nations in the human rights field. The 1968 Teheran International Conference on Human Rights recognized the "profound interconnection between the realization of human rights and economic development".

51 Although it is pertinent to mention here that of representation in the United Nations Security Council is an exception to this claim even at theoretical level.
system. Other countries, do not offer the same equal opportunities for the creation of a consensus on the ordering of international relations, including development policy and practice. The growing acceptance of the relevance of human rights-based approaches to development not only empowers the beneficiaries of development, by purporting to make them the active participants of the development process, and by giving greater legitimacy and moral force to their demands. It also fundamentally requires greater accountability from all actors in the development process: through legal, administrative, or political mechanisms, individuals, as right-holders, can make claims on the conduct of individual and collective agents, including states, which, as duty-holders, can be held responsible for not meeting their obligations.\textsuperscript{52}

Besides the United Nations and its agenda for human rights and development and its efforts for the integration of these two concepts, one cannot ignore the various other important institutions and other factors which are equally important in this debate, therefore it would not be out of the context to explore some of these factors to understand the various nuances of the Right to Development. Market access is also important for the realization of Right to Development. It has been already highlighted that there is no parity in the international trade and market. The behaviour of the developed country cannot be considered appropriate for a world economic order which fosters economic growth without equity. Only removing the trade barrier and more liberalization is not enough but the expansion of trade and economic growth should lead to expansion of human capacities also. Indicators for increased openness such as export growth and rising trade to Gross Domestic Product ratios are important, but they are not proxies for human development.

\textsuperscript{52} Supra note 14 at 7.
The United Nations Development Programme reports suggest that there are various kinds of malpractice that are prevalent in international trade which ultimately fail to craft an atmosphere which are congenial to Right to Development. Even the regimes under Trade Related Intellectual Property Rights are discriminatory in nature which in a way denies the access to essential commodities like medicine etc. The regime puts a limit on the domestic ability to develop and pay for pharmaceuticals. The Intellectual Property Rights regime raises several thorny issues also in other areas like food security, bio-diversity, education, traditional knowledge etc. It has also to be seen that whether regime under Trade Related Intellectual Property Rights are counterproductive to goals set in Millennium Development Goal. There is a kind of growing acknowledgement of the fact that donor states can ensure the realization of right to development in the debtor states. The donor states as well as institutions can propel for strengthening the roots of democracy and push for a government which is accountable, transparent and stable.

Now even the International Monetary Fund and World Bank are imposing condition on the debtor states for human rights obligation. In fact one can say that adherence to human rights are now part of the donation package. To a certain extent it has been expressed that there is need to align the debt package with the conditionality to meet the objective of Millennium Development Goal. The core objective of the Millennium Development Goals is the halving, by 2015, the proportion of people living in extreme poverty.

53 High-income countries face tariffs three to four times higher than the barriers applied in trade between high-income countries. Developing countries account for less than one-third of developed countries imports but for two-thirds of tariff revenues collected. These are just a few among innumerable examples that suggest that developed states are directly responsible for the creation of conditions in which the human rights of people in developing countries are violated. Supra note 14 at 7.
Policies of most international development institutions, such as the International Financial Organisation and bilateral agencies, have now been restated around this objective. Poverty is defined not only in terms of income, but also in terms of capabilities and opportunities. Poor people's own experiences have been used to confirm the multidimensional nature of poverty. The Right to Development is not phrased in terms of poverty eradication, and cannot be reduced to it. However, a focus on poverty eradication can be said to be consistent with the Right to Development's concern with social justice, respect for human rights and participation. There is an international consensus on the objective of eradicating world poverty, as expressed through the Millennium Development Goals. The United Nations Millennium Declaration clearly links the Right to Development to this objective: "We are committed to making the right to development a reality for every one and to freeing the entire human race from want". The Millennium Development Goals, and their predecessors the International Development Targets, are based on agreements reached at a series of United Nations conferences during the 1990s. Though the Millennium Development Goals are not phrased in human rights terms, and do not refer to the results of the United Nations World Conference on Human Rights, they can be interpreted as setting a number of rights-based development principles. In particular, the Millennium Development Goals can be construed as indicators of economic, social and cultural rights.

The Right to Development could therefore be construed as a right to having the Millennium Development Goals met, an aspect of which could include a right to having effective poverty eradication.

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55 For instance if a policy of the government, which aims at securing food security and introduces a technology which leads to loss of job to farmer, it can not be said to adhering to principles of Right to Development.
56 Supra note 14 at 24.
57 The Millennium Development Goal Declaration, Para 11.
policies developed and implemented in a manner respectful of all rights. Existing mechanisms to hold states accountable for the realisation of this right could include the Committee on Economic, Social and Cultural Rights, which has developed a body of comments and guidelines on the realisation of economics, social and cultural rights and the Human Rights Committee, which monitors civil and political rights. However, this is not a politically feasible proposition, because now it is one of the important aspect of human rights regime. For the purpose of giving aid to the concerned country, the performance of state is measured in relation to adherence to human rights standards set by International community. Generally it is done on the basis of violation of the civil and political rights currently very less weight is given to the adherence to the social and economic right. Poverty eradication is rarely expressed in terms of human rights in international policy documents, and the realisation of human rights rarely described as the main objective of development. At the same time now this matter has been underlined that increasing the amount of the aid is imperative for some of the states but it is not an answer to inequitable international economic order. The larger question that remains to be answered are that of structural disadvantages to the third world countries. But at the same time some questions are being asked regarding the need to address the democratic requirement of a government's accountability to their electorate rather than to the World Bank and International Monetary Fund. The social contract between a state and its people may be undermined by the condition that states are in large part answerable to the international financial institutions for the economic and social policies they pursue.58

(f) Democracy, Governance and Changing conceptions of Human Development

58 Supra note 14 at 24.
Since internal and external conditions for development are interdependent, democracy is essential at the national as well as international levels. Democracy is an essential element in the realization of the right to development and the failure to realize and respect the doctrines of democratic governance has been shown to be a serious impediment to the realization of the right to development. In this background, the right to development is not so much a right to the enhancement in material well being, but the right to have a say in, and share control over, the economic environment. A major substantive achievement of the Global Consultation was refurbishing the concept of “participation” in human rights law. It was agreed that participation must be active and must involve genuine power. The conditions for democratic participation include “a fair distribution of economic and political power among all sectors of national society”. Thus, people are “the subject rather than a mere object of the right to development”. They are not simply “resources” to be made healthy, skilled, and productive; they have a right not only to survival and material improvement, but to some measure of power.60

However, the environment in which development can or cannot occur is shaped by a multitude of different and complex factors of economic, cultural, political and historical nature both, on the internal (national) and external (international) levels. The interdependency among all these factors makes it difficult to identify the reasons why a given country is not developing economically and socially while others do. Several problems and questions arise from this: how can the Right to Development help change this situation?

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59 Genuine ownership or control of productive resources such as land, financial capital and technology ever, participation “should be viewed both as a means to an end and as an end in itself”. This rejects the sufficiency of “basic human needs” as a development policy. States must not only take concrete steps to improve economic, social and cultural conditions and to facilitate the efforts of individuals and groups for that objective, but must do so in a manner that is democratic in its formulation and in its results.

60 Supra note 43 at 330.
Which mechanism can be used to operationalise the Right to Development in practice? Which indicators could be used to measure implementation of the Right to Development? When we look into the external factors, it is namely the imbalances between rich and poor countries that are faced; exploitative relations in the past have been widely held responsible for the lack of development. Here again, which mechanism should or could the Declaration on the Right to Development provide to address these imbalances and injustices on the international level? On the internal (national) level, the Right to Development is challenged by existing deficits in terms of governance, comprising a lack of accountability and participation mechanisms, as well as an often missing focus of governmental policies and services on the most marginalized groups of society.

The text of the Declaration is widely accepted among states. It is the lack of concrete mechanisms for implementation as well as the lack of criteria and indicators for measuring the degree of fulfillment that have so far prevented the Right to Development to obtain binding legal force. What is needed is the political will of the nation states to commit to implementing the Right to Development in practice. Examples of how the Right to Development could be useful in practice could help bringing out its added value for the promotion of human rights and therefore alleviate the impass between rich and poor countries. The Human Rights Council’s Working Group on the Right to Development and the High-level Task Force on the Right to Development have undertaken substantial initial steps in this direction by translating the Declaration on the Right to Development into practical instruments and mechanisms.

Emerging from the development debate in the 1960s, this human right has become universally accepted in theory, but lacks examples of practical application. Only recently, the United Nations
Working Group on the Right to Development has started to focus on the implementation of the Right to Development to certain global partnerships as a piloting exercise. For this purpose, a list of "criteria for periodic evaluation of global development partnerships from a right-to-development perspective" has been developed and amended with a suggested initial "implementation checklist" of indicators.61

Development cooperation has changed and improved during the last decades. Many approaches before had proven unsuccessful, some projects even counterproductive. One major flaw in the overall conception and implementation of development cooperation was the external approach of donors, neglecting the real needs of the population concerned.62

To counter these problems, policies have been changed many times, yet mostly unilaterally by the donors. Conditionality was obvious in all arrangements, forcing the partner countries to accept and implement policies that were deemed helpful by the donor countries. As the problems created by this approach became apparent, little by little a shift to increasing participation of the partner countries happened, allowing them more space for policy formulation. Recently the donor community was "rethinking conditionality" in a process of discussion with partner countries and adopted cooperation policies, which strongly promote the partnership aspect. Since then, concepts like ownership, policy space and sustainability dominate thinking and planning of and within development cooperation. All these aspects are embedded in the

62 Id. at 10.
overall goal of working towards good governance and democratic structures in partner countries, to be achieved in partnership.63

C. Historical Matrix of the Right to Development: Going Beyond Conventions and Covenants

Since the consensus over unity of civil and political rights and economic, social and cultural rights was broken in the 1950’s, with the spread of cold war64 the United Nations had to adopt two different covenants namely International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, to reflect the political colours over the spectrum of United Nations programme. These covenants were conferred with the status of international treaties in the late 1960’s. It took almost more than three decades to the world community to bridge the gap between these two sets of rights. During the 1970s and 1980s the Right to Development was introduced as one of the several rights belonging to a third “generation” of human rights. According to this view, the first generation consisted of civil and political rights conceived as freedom from state abuse. The second generation consisted of economic, social, and cultural rights, claims made against exploiters and oppressors. The third generation consisted of solidarity rights belonging to peoples and covering global concerns like development, environment, humanitarian assistance, peace, communication, and common heritage. The sorting of human rights into such precise generations is attractive in its ease.65 The formal articulation of the Right to Development in the form of texts using the human rights

61 Id. at 9.
64 Arjun Sen Gupta, “Right to Development as Human Right”, EPW Special Articles, July 7 (2001), as available at www.epw.mumbai@gmail.com accessed on 10.06.2006.
65 A general priority has been given to guaranteeing individual freedoms in eighteenth-century revolutionary struggles of Europe and North America, to advancing social justice in nineteenth- and twentieth-century struggles against economic exploitation, and to assigning rights and obligations to the principal agents able to advance global public goods in the late twentieth century.
terminology is a phenomenon of the late twentieth century, beginning in the early 1970s.66

In 1986 The Declaration on Right to Development was adopted by United Nations but the world was still divided between those who denied that the economic, social and cultural rights could be regarded as human rights and those who considered that the economic social and cultural rights as not only fully justifiable human rights, but as essential rights. It is this dilemma of the world community that provided another support to sustain an international social, political and economic order which was exploitative from so many benchmark of justice.

It was in the above mentioned backdrop and where most of the powerful nations were not ready to shrug their colonial and exploitative mentality, the idea of development as a human right spread out from the post-colonial debate and the averment of newly independent developing countries as well as a number of intellectuals. A joint voice was raised against developed countries to lend a hand for the development of the former colonies whose underdevelopment, in their view, was due to the exploitive practice of the wealthy North.67 The concept has its roots in the political economy of the 1970s and 1980s, when developing countries mobilized for a New International Economic Order in which countries of the North would actively facilitate growth and development in the South through aid, trade, and investment. While the right to development is still championed by developing countries and resisted by donor countries.68 This idea was initially promoted by

67 Supra note 61 at 11.
68 Supra note 12.
Raul Prebisch in the early 1960s. Through the concept of "dependence theory", he introduced the argument of structural disadvantage of developing countries to the international discussion. Academically, the Right to Development was perhaps first brought in as a human right in a lecture by Judge Kéba Mbaye of Senegal in 1972.

As far as entering the sphere of the United Nations Human Rights System is concerned, the Right to Development was defined by a majority of the members of the General Assembly as a human right with national and international, individual and collective dimensions in the 1986. The United Nations General Assembly proclaimed development as a human right in its 1986 Declaration on the Right to Development. The United States cast the only negative vote; eight other countries abstained. Human rights once set down on paper, never die, even though no one may care much about their survival. Rather, they mutate into working groups, commissions, and expert panels, each of which produces reports that are occasionally the subject of discussions in low-level meetings. Sometimes, however, out of this patient work contested or marginal rights gets a

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69 Then he was the director of the Economic Commission for Latin America and the Caribbean (CEPAL).
70 Dependency theory is a theory of how developing and developed nations interact. It can be seen as an opposition theory to the popular free market theory of interaction. Dependency theory was first formulated in the 1950s, drawing on a Marxian analysis of the global economy, and as a direct challenge to the free market economic policies of the post-War era. As given on http://www.wisegeek.com/what-is-dependency-theory.htm as accessed on 29.8.2010.
second lease of life which has given hope to the lost battles. This is what has happened to the right to development.

At the 1993 World Conference on Human Rights in Vienna, the right to development was re-adopted, this time unanimously, as part of the broader Vienna Declaration and Programme of Action. Thus it can be claimed that the right to development now reflects a global legal consensus, and as such represents a victory for its advocates.\textsuperscript{73} Although it seems, there is a consensus on the point that human development is an integral part of human rights discourse. But it took almost 38 years for the world community to accept at least on papers that right to development is a human right.\textsuperscript{74} Finally, a new consensus emerged in Vienna at the second United Nations World Conference on Human Rights in 1993. The Vienna Declaration showing its concern for right to development reaffirmed that, the right to Development as established in the Declaration on the Right to Development, as a universal and inalienable right and integral part of fundamental human rights.\textsuperscript{75}

A breakthrough happened on April 22, 1998, when the United Nations Commission on Human Rights adopted by consensus a resolution on the Right to Development,\textsuperscript{76} recommending to the Economic and Social Council the establishment of a follow-up mechanism consisting of an open-ended working group and an Independent Expert. The purpose of the working group was to monitor and review the progress of the Independent Expert and report back to the Commission. The Independent Expert was to “present to the working group at each of its sessions a study on the current state of progress in the implementation of the right to development as a

\textsuperscript{73} Supra note 12.
\textsuperscript{74} Supra note 64.
\textsuperscript{75} Ibid.
basis for a focused discussion, taking into account, inter alia, the deliberations and suggestions of the working group”. Dr. Arjun Sengupta, a prominent Indian economist, was appointed Independent Expert and by 2004 had produced eight reports, while the Open Ended Working Group had held five sessions. The Commission decided in 2003 to request its Sub-Commission on the Promotion and Protection of Human Rights to prepare a concept document establishing options for the implementation of the right to development and their feasibility, inter alia an international legal standard of a binding nature, guidelines on the implementation of the right to development and principles for development partnership, based on the Declaration on the Right to Development, including issues which any such instrument might address. In its sessions in 2006 and 2007, the High Level Task Force drew up and subsequently structured criteria for the periodic evaluation of global development partnerships from a Right-to-Development perspective and amended them with an initial “implementation checklist” of indicators. Existing monitoring systems of the above mentioned partnerships with view to possibly extrapolating a monitoring and evaluation system for development partnerships from the perspective of the Right to Development.

The work plan for the High Level Task Force, agreed upon by the Working Group, lays out the following steps of a “gradual approach” to be taken over the next three years. During the first year 2007, the High Level Task Force was supposed to continue to

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7 Supra note 66 at 139.
10 The list of criteria is contained in the report of the Working Group on its 8th session: A/HRC/4/47.
12 See three-year work plan of High Level Task Force as laid out in A/HRC/4/47, para. 53.
work on the research taken up on the partnerships. It was also
consider the Cotonou Partnership Agreement between the African,
Caribbean and the Pacific Countries and the European Union with the
aim of refining the criteria and indicators on the Right to
Development. In the second year of this cycle 2008, the High Level
Task Force was supposed to extend the scope of research to
additional partnerships, covering a wider geographical and thematic
range, taking into account all the issues contained in Millineum
Development Goal 8. In the third year 2009, the High Level Task
Force planed to sum up its findings and present a consolidated list of
criteria and operational indicators.83 In addition, the High Level Task
Force intends to make suggestions for the Working group subsequent
work.84 The Right to Development Section functions under the
Development and Economic and Social Issues Branch (DESIB) of the
Research and Right to Development Division of United Nations
office of the high commissioner for human rights. From time to time
Office of the High Commissioner on Human Rights divulges the
latest progress and policy regarding the right to development.85

D. Right to Development: Exploring the Contents and
Emergent Nature

The “right to development” is an inalienable human right by
virtue of which every human person and all people are entitled to
participate in, contribute to and enjoy economic, social, cultural, and
political development, in which all human rights and fundamental
freedoms can be fully realised”,86 As referred in previous section also

83 A/HRC/4/L.11/Add.1. The resolution is unclear in its extent: para. 2(f) of the
Resolution on the Right to Development renews the mandate for two years, while
para. 2(b) endorses the road map of three years.
84 Supra note 61 at 13.
85 See: High Commissioner’s Strategic Management Plan 2010-2011 as available at
www.ohchr.org/Documents/Press/SMP2010-2011.pdf as accessed on 17.12.2010 and
various other reports available at the official website of Office of the High
Commissioner on Human Rights.
86 Article 1 of Declaration on the Right to Development, 1986.
it undoubtedly includes rights to accomplishment of basic needs as one of the inherent facet of the right to development, an indispensable component of the enjoyment of economic and social development. However, in several ways the right to development goes further than what the majority would define as realization of basic needs. In many sense it extends to cultural and political development, which is usually not included in the basic needs approach. The Right to Development furthermore implies vibrant accomplishments, i.e., to raise living standards with the passage of time, whereas the basic needs approach is principally concerned with granting certain standards to each one at earliest point of time, and less concerned with growth over time. Moreover, economic development is an attribute of a society as a whole, while basic needs fulfillment and rights concern rights of individuals within society. These distinctions can be over-drawn, since a dynamic version of basic needs must include, as one can see, improving standards over time, while there is interdependence between individuals' fulfillment of basic needs and what is happening to society as a whole.\footnote{Supra note 6 at 349.}

(a) Stipulating the Contents of the Right to Development: Examining the Surface and Deep Propositions.

To discover the contents of the Right to Development one has to really dive deep into the text of this declaration, which is very short and snappy on paper nevertheless it hides from view very deep meanings which can be of far reaching consequences. It is over and over again blamed that even though central theme of the Right to Development is moderately precise, the Declaration on the Right to Development is not a very clear document, and as a consequence, the content of the Right to Development has been interpreted in numerous ways. After investigating document (Declaration on the
Right to Development) the following components appear to represent the core content of the Right to Development:

(a.1) Human Person is the Centre of Development - The human person is the central subject of development and should be the active participant and beneficiary of the right to development.\(^{88}\)

(a.2) Promotion and Protection of Human Rights - States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of people and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self determination.\(^{89}\) All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.\(^{90}\) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic,

\(^{88}\) Article 2(1) of Declaration on the Right to Development, 1986.
\(^{89}\) Article 5 of Declaration on the Right to Development, 1986.
\(^{90}\) Article of 6(1) of Declaration on the Right to Development, 1986.
social and cultural rights.\textsuperscript{91} States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights.\textsuperscript{92} This is consistent with the general affirmation of the equal status to be given to all human rights at the 1993 Vienna World Conference on Human Rights, which followed the end of the cold war.

(a.3) Individual and Collective Responsibility for Development - All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.\textsuperscript{93} At the same time States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.\textsuperscript{94}

(a.4) International Co-operation for just Political Order - Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster

\textsuperscript{91} Article of 6(2) of Declaration on the Right to Development, 1986.
\textsuperscript{92} Article of 6(3) of Declaration on the Right to Development, 1986.
\textsuperscript{93} Article 2(2) of Declaration on the Right to Development, 1986.
\textsuperscript{94} Article 3(1) of Declaration on the Right to Development, 1986.
their comprehensive development.\textsuperscript{95} And member country should promote and protect an appropriate political, social and economic order for development.\textsuperscript{96}

The realisation of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.\textsuperscript{97}

States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfill their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.\textsuperscript{98}

(a.5) Ensuring Participation of people in development - States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from.\textsuperscript{99}

States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.\textsuperscript{100}

\textsuperscript{95} Article 4(1) of Declaration on the Right to Development, 1986.
\textsuperscript{96} Article 2(2) of Declaration on the Right to Development, 1986.
\textsuperscript{97} Article 3(2) of Declaration on the Right to Development, 1986.
\textsuperscript{98} Article 3(3) of Declaration on the Right to Development, 1986.
\textsuperscript{99} Article 2(3) of Declaration on the Right to Development, 1986.
\textsuperscript{100} Article 8(2) of Declaration on the Right to Development, 1986.
(a.6) Social Justice - States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.  

(a.7) International Peace and Security - All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.

(a.8) Self Determination - The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. The provisions on self determination have been interpreted by some not just to refer to a

101 Article 8(1) of Declaration on the Right to Development, 1986.
102 Article 7 of Declaration on the Right to Development, 1986.
103 Article 1(2) of Declaration on the Right to Development, 1986.
reaffirmation of the independence and equality of nations, but so as to strengthen the rights of persons belonging to minorities and indigenous groups to determine for themselves the processes and forms of development that are appropriate for their cultures and circumstances. Self-determination here means that, as a minimum, minorities must enjoy the right to participate in the design and implementation of a genuine sustainable development policy.104

(b) The Nature of the Right to Development: Descriptions and Interpretation

Although Right to Development has been accepted as one of the inalienable human right in the Declaration on the Right to Development, and avowed so again at the Vienna World Conference and since then it is part and parcel of the international human right schema. However, even today some of the challenges which are being faced from various quarters are what type of right is it? Who are the duty-holders and rights-bearers? Whether Right to Development is a human right? What are the consequences if it is accepted as one of the human rights? How can it be implemented, monitored, and enforced? Is it a new and separate “third generation right”? How does it interface with other rights? On the basis of the above questions the present debate of Right to Development hovers around the following assertions:

- Merely a sum of previously existing rights to say the aggregate of civil, political, economic, social and cultural rights;

104 Supra note 14 at 11.
- An instrument to converge and put development in the centre of human rights framework and the human in the centre of development;

- Using as tool to realise the human rights of people affected by the development processes and it emphasizes on the right to a particular process of development;

- A new third generation right formulating new obligation, against developed countries in the form of Overseas Development Assistance; giving international cooperation an already recognised principle of international law to new altitude or

- A new facet of the concept of sovereignty and right to self-determination from economic point of view.

Recalling and mindful of the above challenges and assertions one aspect is explicit that main focus of the debate is emerging in the form of ‘rights’ discourse. To entitle any idea with the term ‘right’, the jurisprudence requires certain preconditions to be satisfied, considering these preconditions it will be pertinent to clarify and examine the following aspects of Right to Development:

(b.1) Who are Right-holders - long-established Principle to human rights law hold that individuals are the bearers of rights, who can make claims against the state for the promotion, protection, and fulfillment of the obligations or duties contained in the right and owed by the duty holder. The Right to Development promotes “people-centered development” and under various analyses

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makes individuals holders of the right to development. However, the Declaration on the Right to Development also refers to “peoples” as right-bearers. This was the main emphasis in the preparatory debates for the Declaration on the Right to Development. The state is not explicitly mentioned as the subject of the Right to Development. The Declaration on the Right to Development can however be interpreted as introducing the notion in Article 2 (3) that states are also right-holders, for example, that they have the right to formulate appropriate national development policies. Under international human rights law claims are held against states; this interpretation would imply that states can have human rights claims against other states, and possibly against the international community. This interpretation which is defended by some academics and developing states goes against the traditional approach whereby human rights obligations are held by states towards their own populations.

(b.2) Who are duty-holders - The Declaration on the Right to Development clearly holds that the primary duty-holder is the state, but at the same time individual also has duties in the realisation of the Right to Development. The Declaration on the Right to Development provides for the active participation of an individual and collectively as a member of a community. According

106 Article 2 of Declaration on the Right to Development.
107 Article 1 (1) of Declaration on the Right to Development.
108 For example if the international community constrains the ability of states to develop national development policies.
109 Article 2(3) and 3 of Declaration on the Right to Development, 1986.
110 Article 2(1) of Declaration on the Right to Development, 1986.
111 Article 2 (2) of Declaration on the Right to Development, 1986.
to the Declaration on the Right to Development, states have a duty of co-operation, both individually and as members of the international community, to formulate international development policies. This reflects international community’s commitment under Article 55 and 56 of the United Nations Charter, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights and Article 28 of the Universal Declaration of Human Rights.

(b.3) National Implementation - The Right to Development is therefore to be realised by states for their own people, through appropriate policies. How the right is to be implemented at the national level is not fully thought out. The Declaration on the Right to Development also offers little advice on how to prioritise national resources in the realisation of the right. The debate at the Commission on Human Rights now acknowledges the importance of good governance at the national level to facilitate the realisation of the Right to Development. But there is little advice on how states can be held

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112 Article 3(3) of Declaration on the Right to Development, 1986.
113 Article 4(1) of Declaration on the Right to Development, 1986.
114 With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and Universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
115 All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.
116 Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
117 Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.
accountable by their own citizens for the realisation of the Right to Development. And according to some academics, some developing states have no intention of implementing the right at the national level, and are only concerned with its usefulness to make claims at the international level.

(b.4) International Implementation - Moving to the realistic level, it is far from comprehension how such a commitment could be defined and realised. No one can be sure that what constitute the most conducive international environment? This is a controversial conception, which varies as definitions of development evolve. How can one attribute culpability for the failure to generate such an environment? How can an individual, or states, hold a claim against the international community? And how can individual states, through bilateral activities, or as members of international organisations, assess whether they are adequately meeting their duty of international cooperation and creating the most conducive international environment. The claim is also made that International Financial Institutions; in particular the World Bank, International Monetary Fund, and World Trade Organization, as key international development actors, have a role to play in the realisation of the Right to Development. Nevertheless it is not clear that how international organisations, which have not signed to international human rights instruments, can be held answerable for the realization of human rights.
(b.5) Enforcement and Monitoring Mechanisms - It is far from clear how the Right to Development is to be realised through appropriate international and national policies. However, even if a consensus was reached on what such policies would entail, how would the beneficiaries - subject or object- of the Right to Development be able to enforce their rights, monitor the process of development, and hold the duty-holders to account?

(c) Mapping the Positions of International Development Organizations: Institutions and Politics of Appropriation

After having a detailed discussion on the nature of the Right to Development it would be pertinent to explore the course of action where the Right to Development is debated, a survey of the proceedings, communiqués and statements of United Nations and other international summits divulges that the Right to Development is predominantly deliberated and referred to in United Nation’s platforms. The above mentioned point of view can be substantiated by the facts that the Declaration on the Right to Development passed in United Nations General Assembly. It is in the United Nations forum where the Right to Development is being recognized as human rights and is in the course of being crystallized and conceptualized. There is significant presence of developing nation in the United Nations where they have greater say in General Assembly and third world countries can have an edge over the developed nations. It would be pertinent to have an overview where Right to Development was deliberated upon in the various United Nations forums, those as follows;

- Annual General Assembly debates in New York (at the Third Committee);
• Annual meetings of the Commission on Human Rights (Commission on Human Rights) in Geneva; annual 5 to 10 days meetings of the Open-Ended Working Group on the Right to Development and discussion of the reports of the Independent Expert on the Right to Development;

• It is unequivocally stated in the directive of the Office of the United Nations High Commissioner for Human Rights; with the objective of promoting research a Right to Development Branch has been established.

• Other steps like appointment of Special Rapporteurs on education, food, adequate housing and the Independent Experts on structural adjustment and foreign debt and on extreme poverty. Besides this the Right to Development has also found place in Treaty Bodies, especially in the Committee on Economic, Social and Cultural Rights which also scrutinizes, international co-operation in relation to the implementation of economic, social and cultural rights. The Right to Development is also been given important places in other United Nations mechanisms, such as the World Conferences; United Nations Conference on Trade and Development, the least Developed Countries Conferences, and the Millennium Summit. In the light of the above mentioned development regarding the Right to Development it would be indispensable to investigate the positions taken by various governments and other international players.

(c.1) Developed Countries: Although most of the developed governments accept the Right to Development as a human right of individuals which also covers group rights but at no point of time they recognized it as right
of states. Indeed they insist that the states have the primary responsibility for realizing the Right to Development. For this they emphasize that the states should focus on the good governance at the national level. As far as international dimension to the Right to Development, is concerned the governments of the developed countries believe that the Right to Development does not comprise of any commitment to offer developmental assistance, at the same time this fact is stressed that one state has right against another states in the name of development. Northern governments have always been of the opinion that the international dimension of Right to Development should be deliberated on the development. It would be more appropriate to discuss the international dimension of the Right to Development in development forums. Keeping in mind the reluctance on the part of the developed countries, they contest the very idea on the ground that it is still not mature to develop a consensus on the Right to Development and time has not ripen to discuss about the permanent follow up mechanism.

(c.2) Developing Countries: Like most of the other international issues there is difference of perspectives between developed and developing nations on the Right to Development too. Especially the leaders from the Non Aligned Movement countries along with China have been the flag bearers for the Right to Development. And it was asserted that the Right to Development is a right of the states and a collective right of the peoples to development, and the international community is under obligation to share the responsibility for the
development. Accountability for the realisation of the Right to Development can’t be just restricted to national government or domestic policies but today, even globalisation, international trade, international economic policies, foreign debt and intellectual property regimes also effect the national development to the highest degree. Recalling the above arguments the developing world press for effective participation by developing countries in international economic order where development needs of all nations are fulfilled. It visualizes an entirely different international financial structural design in which doors and windows are open for even third world countries. That structural redesign must provide for a full proof management for restraint and response to cope up with international financial crisis. According to developing nations the occasion has arisen for discussing the permanent follow-up mechanisms and some of them are pressing a Convention, or for the time being a mechanism to monitor the implementation of the Right to Development world wide.

Development organizations are generally not active participants in debate relating to the Right to Development indeed it is considered to be a privilege of states. However, the United Nations has been extending invitation to attend the Open Ended Working Group and to express their views on the convergence or non convergence of human rights concerns into their developmental agenda. The Office of the High Commissioner on Human Rights has a unique task for mainstreaming human rights transversely under the
United Nations system. It is suppose to track and appraise the progress made in the realization and execution of the Right to Development. At the same time it is also the responsibility of the Office of the High Commissioner on Human Rights to submit annual reports to the General Assembly or Commission on Human Rights and interim reports to the Open Ended Working Group. Among the United Nations agencies the United Nations Development Programme has taken an edge in developing a rights-based approach to development in fact its role in giving direction to the Right to Development discourse is innumerable and invaluable.

(c.3) The World Bank – the World Bank vision regarding Right to Development and human rights seems to have changed in last few years. With the passage of time and with its constant interactions with Office of the High Commissioner on Human Rights and Non Governmental Organisations working in the area of human rights, the World Bank has changed its hesitant approach which is reflected in various policies adopted by the word bank especially after.

(c.4) The International Monetary Fund - Unlike World Bank the International Monetary Fund does not consider itself bind by an international obligation to promote and protect human rights. At the same time this fact has to be remembered that even the International Covenant on Economic Social and Cultural Rights is not binding on

International Monetary Fund. In fact it emphasizes on promoting macroeconomic stability and poverty reduction strategies by keeping the pre conditions for the realization of economic, social and cultural rights while providing financial assistance.

(c.5) World Trade Organization - Today, World Trade Organisation is playing an important role in international economic order and any debate regarding Right to Development without referring to World Trade Organisation is not complete. Although it has contributed in this debate but its position on human rights is vague. As World Trade Organisation deals with the liberalization it provides preferential treatment for developing countries. It also recognizes the obligation to liberalise in favour of developing countries and developed states are supposed to contribute for this.¹¹⁹ Many Other international organisations¹²⁰ also participated in Right to Development debates.

(c.6) Non-Governmental Organizations: Due to ambiguity and the nature of the politics behind the debate, comparatively less number of Non Governmental Organisations are vigorously concerned with the Right to Development debate. One of such Non Governmental Organisation Franciscans International is based in Geneva and Rights and Humanity, in UK are trying to

smooth the progress of the inter-governmental discussions. Another Non Governmental Organisation which has gained some identity as development oriented Non Governmental Organisation is Oxfam. It is using a rights-based approach and cautiously engaging in the Right to Development debate. Oxfam is contextualizing it as a helpful opening point on the responsibility of non-state actors for development. However, interestingly enough the majority development Non Governmental Organisations appear to choose to crusade for a particular right. Organizations like Amnesty International and Human Rights Watch have chosen to work in the sphere of economic and social rights, including on the role of transnational corporations while excluding the Right to Development from it. An investigation of Non Governmental Organisations objective statements during international development conferences disclose that barely any Non Governmental Organisations refer to the Right to Development. Nevertheless, at one point or the other, promotion and protection of particular rights are talked about. In the context of the Financing for Development process, the Danish United Nations Association seems to be one of the few Non Governmental Organisations advocating for the integration of human rights and development based principles of the Right to Development. International consensus on development simply looking at whether or not the Right to Development is mentioned in international statements may not reveal the full extent of its current relevance and one can’t really assess whether or not it appears to have been influenced by the Right to
Development debate, or at least corresponds to some of the principles of the Right to Development.\textsuperscript{121}

E. Right to Development: Controversies and Difficulties in Practice

After mapping the positions held by the main players of the debate: developed and developing states, international organizations, and Non Governmental Organisations,\textsuperscript{122} it can be viewed that from a political, real-world, perspective, and the journey of the right to development has been full of controversies. The history of Right to Development shows no significant headway in the journey so far. According to most legal scholars, the declaration was bad law: vague, internally contradictory, duplicating other already codified rights, and devoid of identifiable parties bearing clear obligations. Asserting that all people have the right to development, and that such development consists of, and is realized through, the realization of previously on hand group of human rights is of course a skillfully crafted proclamation, nevertheless, operationally meaningless on the ground.\textsuperscript{123} It’s not only among legal luminaries but the confusion regarding the lack of consensus on the meaning and status of the Right to Development persists even in the diplomatic circle. The United Nations is the main arena where the inter-governmental political debate takes place. The mechanisms established by the Commission on Human Rights have failed, so far, to arrive at a political consensus on the meaning of the Right to Development, and, more importantly, on its practical implications.\textsuperscript{124} The 20\textsuperscript{th} century witnessed a tremendous growth in human rights and human development, but there is long unfinished agenda which has to be

\textsuperscript{121} Supra note 14 at 24.
\textsuperscript{122} Ibid.
\textsuperscript{123} Supra note 12.
\textsuperscript{124} Supra note 14 at 15.
completed in the coming century. The world today is facing many problems.\textsuperscript{125} Despite the fact that much progress has been made in the realization of the right to development as a human right but it is also clear that major obstacles stand in the way of transforming the aspirations of declarations into reality for the hundreds of millions of peoples for whom development remains an empty promise. The controversies and obstacles\textsuperscript{126} regarding Right to Development can be discussed under the following heads.

(a) **Right to Development: and its claim as an International Law**

There are following main debates Concerning the international legal status of the Right to Development:

(a.1) even if the Declaration on the Right to Development has met the ritual to become a new internationally accepted human right, Declaration on the Right to Development is not a legally binding treaty. An appraisal of other resources demonstrate that the Right to Development is not legally binding under international law and that states other than parties to the African Charter on Human and Peoples’ Rights\textsuperscript{127} cannot be held legally

\textsuperscript{125} United Nations Development Programme Human Development Report 2000 highlighted many problems which are still consider as violation of human rights, such as Progress has been uneven across regions and among groups of people within countries – some 90 million children are out of school at primary level – by the end of 1999 nearly 34 million people were infected with HIV.

Freedom from fear – the security of people all over the world is still under the threat – around the world on average about one in every three women has experienced violence in an intimate relationship – world wide about 1.2 million women and girls under 18 are trafficked for prostitution each year – about hundred million children are estimated to be living on the street.

In 1900 no country had universal adult suffrage today nearly all country does, but still about 40 countries do not have a multiparty electoral system.

\textsuperscript{126} See: Stephen Mark, “Obstacles to right to Development” as available at \url{www.hsph.harvard.edu/fsbe_wp17marks.pdf} as accessed on 11.9. 2007.

\textsuperscript{127} “Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone; Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights
accountable for its implementation. But at the same time the moral and political force of the Declaration on the Right to Development can't be refuted. The Right to Development is often interpreted as including a duty to provide international assistance, which would possibly be legally binding. This could have a considerable practical impact on development policy and practice. However this obligation may be moral or political, but cannot be regarded as binding under international law.

(a.2) As a final point, it can be said that other mechanisms in the realms of international human rights law can be construed as giving rise to obligations on states alike, but not identical, to those that some derive from the Declaration on the Right to Development.

(b) The Politics Regarding the Right to Development

From the very beginning the concept of right to development has been the bone of contention. It emerged from the legitimate preoccupation of newly independent countries with problems of development and dominance of developed countries. From time to time developed countries have been opposing this concept and they have made it clear that they would not allow the declaration to create any entitlement to transfer resources and it should not be binding rules in the name of right to development. The course and destination of political dialogue of the various working groups on the Right to
Development and the Commission on Human Rights is time and again portrayed by expected political ideologies and the reactions and reflections from various quarters are not based on realistic discourse on the realization of the Right to Development. One can easily feel dominance of political North agenda on the programs of the Commission on Human Rights, sidelining the blazing issues and grievance of the political South. The very idea to utilise the United Nations platform for lobbying the New International Economic Order had thrilled and energised newly independent states. However, this challenge to the existing world order from the third world states, which, was favoring Western industrialized countries generated a reaction that ranged from cautious support among Western European delegations to outright hostility for the idea of a human Right to Development from the United States and a few others. Even discourse and debates in Open Ended Working Group reflects these political positions.

The political positions can be classified roughly into four groups.\textsuperscript{128} The first group which was the most vocal and most determined states and the member of Non Aligned Movement in the Working Group consists of Algeria, Bangladesh, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, and Vietnam.\textsuperscript{129} They raised their voice to use the Right to Development as weapon to diminish inequities of international trade, the harmful effects of globalisation, and to create positive move for removal of all the hurdles which are unfavorable to human development and human rights. While second group consists of the more moderate developing countries those are truly interested in integrating human rights into

\textsuperscript{128} Supra note 66 at 141.
\textsuperscript{129} Ibid (List circulated by the Secretariat at the Open-ended Working Group on the Right to Development (Feb. 10, 2003. In 2004, like minded group ceased to exist and the group spoke though the Non Aligned Movement representative Malaysia).
their national policies for development and are in favour of healthy cooperation with the institution concerned with development and donor groups. As far as the third group is concerned, it consists of those states which are through transition period and developed states want to use Right to Development as a launching paid for a better and positive dialogue between developed and developing nations. The third group consists mainly of countries of European Union. They in principle support Declaration on the Right to Development. The United States represents the fourth group and vehemently opposed and voted against the declaration. Apart from US, there is fluctuation in other members stand on this issue according to circumstances and this group consists of Japan, Denmark, and Australia, besides some tiny, US follower nations. The United States hostility towards Right to Development can be catalogue in the following manners:

United States government made it clear in 1981 that the demand for New International Economic Order should not be revived under the grab of Declaration on the Right to Development.\textsuperscript{130}

The United States administration was also against any kind of entitlement for resource transfer. They insist that development assistance is a matter of sovereign rights which can't be bargained in the name of Right to Development. Probably the United States was arguing on the basis that whether under Right to Development regime one can really force the sovereign states to contribute resources for international community. By the same logic where the question is raised that whether rich person can be forced to feed the poor of a locality.

Americans also objected to Right to Development on the basis of their ideology regarding Political Economy and asserted that every nation had the opportunity to develop and indeed they are under duty to develop for the betterment of the citizens. Michel Novak, who was the United States representative in human rights commission quoted American experience regarding Right to Development and emphasized that their people knew that a responsibility to develop was imposed on them and when they got independence no body talked about Right to Development. He observed that, “In 1881 no one spoke of “right to development”. But our nation had an opportunity to develop, perhaps even a responsibility to develop. Our people knew that a responsibility to develop was imposed on them by their own capabilities and blessings, and by their new ideas about political economy”.

From the very beginning the United States gave more importance to civil and political rights in comparison to Economic, Social, and Cultural Rights according to them the realization of economic, social and cultural rights is progressive and aspirational in nature. keeping these ideology in background they objected to “equal attention and urgent consideration” provision of the preamble and article 6 of the Declaration since it would require such attention be paid to economic, social, and cultural rights, as it is given to civil and political rights and the United States stand is well known to the world. According to them Right to Development is not a “fundamental”, “basic”, or “essential” human right. However it is also well known that most of the developing countries and development agencies, as well as the Independent Expert consider that the realization of economic, social and cultural rights is very decisive for the implementation of the Right to Development.

1.2 Id. at 147.
The United States administration has been questioning the very engagement of Commission on Human Rights on the issues related to international trading etc as well as issues like globalization and its impact on the basis of lack of jurisdiction of the Commission. This opposition is mainly based on the apprehension that if the Commission take in hand the above mentioned issues from a human rights viewpoint about which the United States is already passionately negotiating with development agencies like the World Trade Organisation, the International Monetary Fund, the Organisation for Economic Co-operation & Development, Asia Pacific Economic Cooperation than the United States stand and the influence will get diluted. The United States domination over these development agencies is a well known fact and United States is very much in a position to nourish its apparent benefits in these forums where United States supremacy and its policies almost remains unquestioned. While the Human rights protagonist and most of the developing countries feel that the Commission on Human Rights should make certain that concerned parties should not dilute human rights concerns whenever the economic and financial matters are discussed and debated.

In 1980 when the declaration was on its drafting stage, the United States opposed any effort to legislate rules on the basis of the New International Economic Order. The United States was very particular about this aspect and it opposed its enforcement even at the level of idea to prepare a concept document for having a legally binding instrument on the right to development by the Sub-Commission. However, on the basis of above mentioned statements one should not jump to any conclusions that United States never supported and endorse the idea of Right to Development. There were some occasions when the United States tied the knot with those who were part of consensus chorus on the Right to Development. In 1993
at Vienna, when it was once again reaffirmed in the Vienna Declaration and Programme of Action which was adopted by consensus that the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.\(^\text{133}\)

In this conference the United States Delegate to the United Nations Human Rights Commission Nancy Rubin, acknowledged that the Right to Development as a universal and inalienable right with the human person as the central subject of development. Despite of some reservations the United States again became the part of accord in 1998 the Open Ended Working Group was formed and the Independent Expert was appointed.\(^\text{134}\)

(c) **Ignorance regarding the Right to Development**

It is also proving to be major obstacle in the realization of right to development. A lot needs to be done at the conceptual level. Teaching in the universities and dissemination of knowledge regarding right to development by enhancing the scholarly debates on various forums can help to solve this problem. The complexities of concepts in the declaration on the right to development pose a great challenge to development practitioners. It requires an in-depth understanding of what actually happens in developing countries while executing development policies.

(d) **Absence of practice of Right to Development: need to go beyond rhetoric and polemics**

The right to development does not get the required attention which it deserves either from international communities or from the

\(^{133}\) *Id.* at 151, see also Vienna Declaration and Programme of Action: Note by The Secretariat, World Conference on Human Rights, Part I, United Nations Doc. A/CONF.157/23, 10 (1993).

\(^{134}\) *Id.* at 148.
state governments. They must plan and set priorities and allocation of resources based on human development approach.

(e) Misconception

The ambitious but the ambiguous language of 1986 declaration on right to development has generated many problems which are as follows:

(e.1) Development takes priority over respect for human rights - It is claimed that failure to respect human right is an unfortunate price to be paid until countries reach a sufficient level of prosperity to afford the luxury of human right. But, this misconception evaporates if one refers to article 6 of Declaration on Right to Development as well as 1993 Vienna Declaration both make it clear that violation of civil and political rights is an obstacle to development and that eliminating violations of human rights is a necessary part of development.

(e.2) Autonomy to states to frame development objectives and policies which can lead to corrupt practices - it is true that 1984 declaration on Right to Development gives an absolute authority to state to frame its own national development policy, which raises some doubts regarding the fare distribution of benefits of development but one should not forget that right to development under the declaration aims at the constant improvement of the entire population and of all the individuals on the basis of their active, free and meaningful participation in

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development and the fair distribution of the benefits resulting there from.

(e.3) Economist’s Opinion – many economists and policy makers oppose the inclusion or introduction of human rights thinking into development because to them ambitious human rights ignore the scarcity of resources. However, one should not ignore the fact that addition of human rights in the development policies in a way helps them because most of the important human rights are subject to progressive realisation.

(f) Credibility of developed country as donor

Declaration on right to development is to a certain extent contingent on whether the developed countries accepts these corresponding duties, and are willing to provide the financial funding and practical support necessary for the realization of this right.136

(g) Domestic liabilities of developed Nations

Sometimes it is also contended that developed as well as developing donor countries also have obligations and duties towards individuals within their own borders. A donor country, or the population of a donor country, may then question the priorities of that country.137

(h) Justifiability

A doubt is also raised regarding the judicial status of right to development, it is yet not clear if the right to development is a moral right or internationally recognized legal right. People perceive it

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136 Excerpts from an interview based on the questions posed to Dr. Sengupta by students of Essex university "The right to development: An Interview with Dr. Arjun Sengupta" as available at www.onjobs.org/authors/Arjun_Sengupta as accessed on 10.10.2007.

137 Ibid.
according to their own right standing. It has also been pointed out by Arjun Sengupta.\footnote{138} Sharing the same sentiments, he says that once the rights are properly defined and obligations are clearly specified moral rights will involve same binding obligation as legal rights. The basic difference is that the legal rights are legislated and encoded in the countries legal system, or customs and conventions and therefore are justifiable. But recourse to the courts of law is not the only way of enforcing a binding obligation. Administrative systems, social norms, public actions and peer pressure as well as civil society’s movements are several other ways of enforcing obligation related to our right.\footnote{139}

(i) **Difficulties in identifying the beneficiaries and duty holders under the right to development**

Under the Declaration on the Right to Development except article 1\& 2 the rest of the declaration is generally qualified by a non specific term ‘should’ and words which imply the gradual realization of Right to Development, which makes the task more difficult for the proponents of human rights and human development to follow the right based approach to development.

(j) **Scarcity of resources**\footnote{140}

Providing good quality education for every child, maternal benefits for every mother, safe drinking water, adequate nutrition or health care for all without adequate resources is next to impossible. To deal with the resource crunch effective economic policies are needed to generate adequate growth. To manage and mobilize extra resource to meet the challenges of right based approach to development the state has to maintain a very crucial balance. Because

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\footnote{138}{Arjun Sengupta was appointed as an independent expert on Right to Development by United Nations.}

\footnote{139}{Supra note 16 at 23.}

\footnote{140}{Supra note 30.}
it has many political ramifications as well as chances of public protests and agitation linked to taxes are also there.

(k) Lack of committed leadership

Right based approach to development requires a very committed and visionary leadership which is efficient effective in handling the monetary and fiscal policy of the country in the age of globalisation, liberalisation and privatisation. This becomes more crucial in the wake of economic crisis through which world is passing today. \(^\text{141}\)

(l) Lack of systematic way of assessing

There should be proper mean and methodology to asses the requirement of society for its requirement of its right based development. It is only with the help of available data and its proper analysis, a long term development policy well knitted with the human rights regime can be adopted for the society. \(^\text{142}\)

(m) Question of accountability

People vs. financial institution—earlier accountability term was basically associated to or taken as accountability to financial institution but in the changed circumstances from a human rights perspective, accountability is to people, not to financial institutions and donors. It has to do with responsibility, not just accounting. Accountability is intended to promote awareness, transparency and innovation. \(^\text{143}\)

(n) Participation of major group

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\(^\text{141}\) Ibid.
\(^\text{142}\) Ibid.
\(^\text{143}\) Ibid.

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Principle of participation is at the core of right based approach to development. As long as major groups like women etc remains excluded from the process of development, the very exclusion is considered as violation of human right. Therefore all efforts should be made to keep the very process of development very participatory at all level from the formulation to the execution of the policy.144

F. Issues and Concerns Regarding Implementation

The non binding legal nature of the Declaration on the Right to Development has been the most potent argument against the legitimacy and realism of Right to Development as a true piece of international law. But if the weight and significance of a law is measured only in the light of enforceability there is always an apprehension of loosing the holistic vision of actual aim in long term. A piece of legislation is not always about the binding or imposing something on some one but it is also about putting a benchmark or setting some common or sometimes some universal standards for the society. Today one of the most celebrated pieces of law in the history of human rights is Universal Declaration of Human Rights which is technically not binding but declaratory in nature. The Universal Declaration of Human Rights sets forth a common standard of achievement although it does not intend to put forth any mandatory legal commitments. But, to say that the Universal Declaration of Human Rights has no legal consequence is to disgrace or else demean the contributions and influence it has made in promoting a culture of more human rights sensitive world. Failure to recognise progress increases the likelihood of applying the same remedies and having the same reactions to changed conditions as to previous conditions, thereby resulting in misdirected approaches and

144 Ibid.
misapplied policies. Same applies to Right to Development also, although technically it is not creating any obligation but the very controversies and confusions because of its interpretation by different interest groups according to their own interests are the evidence of its significance and the influence. In the light of the above arguments the protagonist of Right to Development should be more focused on its implementation aspect.

While talking about enforcement of a right it is a well known fact that all depends on the nature of the supervisory and enforcement mechanisms associated with the rights. Only conferring a legal status and by providing for enforcement mechanisms are not enough but simultaneously there are some other vital aspects which should be given due importance, for instance it has to be defined in clear terms that what exactly constitute a right because it helps immensely in knowing the fact that whether these basic rights are being fulfilled or not. It has to be accurately defined and delimited to make the right to development a reality. At the same time monitoring of fulfillment of basic needs and advancement in fulfillment of development is also very crucial. In some way effective enforcement mechanisms should also be ensured firstly by a system of international monitoring, reports, recommendations; secondly by enforcement by individuals or states through the legal system (national and international); and finally the use of other international levers such as finance and trade to support enforcement.

Since the day of very adoption by the United Nations in 1986, the Declaration on Right to Development has been in the eye of storm. The developing nations in the South made it the basis for resource transfer, the developed countries ruled out the possibility of any such kind of right. But, more or less after seven years at Vienna

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1 Supra note 9 at 62.
116 Supra note 6 at 350.
World Conference in 1993 on Human Rights changed the scenario where a forum and base were provided for the debate to move from rhetoric towards actual implementation. The Open Ended Working Group was established and the Independent Expert on the Right to Development, Professor Arjun Sengupta, was mandated to find a way of operationalising the right to development. The Independent Expert has recommended a Development Compact between a specific developing country and the international community and international financial institutions as a mechanism for implementing the right to development.147

To conclude it can be said that the current controversy surrounds the process of globalisation, the equal participation of developing countries in that process, and its relation to human rights.148 Above all, the economic and political powers are mostly cornered by the developed and industrialized nations which is the main source of obstacle to development and the same process of inequality and inequity is cemented by the non-democratic decision-making processes of international economic, financial and trade institutions. Some powerful countries are controlling and shaping the present international financial and economic environment according to their own gain and at the cost of development of underdeveloped world. The developing or underdeveloped countries were especially critical of international development plan which has been biased and based on consideration for economic growth and one of the consequences of this undemocratic economic environment due to ignorance of the social, cultural and political aspects of the human rights and human development also results in violation of human rights. It has to be kept in mind that none of the models of

148 Supra note 14 at 8.
development can be universal in nature. In the above mentioned backdrop it becomes important to redefine and reconstruct/deconstruct the definition of 'development' if should be determined by the people/societies themselves according to their requirements which is fitting to their conditions and environment. In the background of the above line of thinking it leads to a notion that any dialogue or debate regarding development can’t negate the idea of participation of the affected persons in the process of development. 

G. Accountability Mechanisms

A human rights approach to development means that the beneficiaries of development have legitimate claims and entitlements against the duty-holders. This requires mechanisms through which such claims can be enforced and monitored. The Declaration on the Right to Development cannot establish a monitoring mechanism as it is non-binding. But a missing aspect of the Declaration on the Right to Development is the lack of recommendation for suitable accountability mechanisms to allow the right-holders of the Right to Development to hold the duty-holders accountable for the process of development. Given the primary responsibility of the state for the Right to Development, it could be argued that the accountability framework is that of the state towards its citizens. This would go beyond a call for participative processes of programme design and implementation, by identifying and requiring mechanisms through which citizens can challenge the state’s implementation of the Right to Development. This could include judicial mechanisms, administrative processes, and even political processes, for example through elections and the free determination of national development objectives. Accountability mechanisms for individuals are harder to

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149 Supra note 43 at 328.
envisage at the international level. How could a citizen of a developing country hold an entitlement, or make a claim, against an international development Non Governmental Organisation, a bilateral aid agency, a multilateral organisation, or even the international community as a whole? It could however be argued that international actors involved in national development processes should find ways of enhancing their accountability to national actors, whether governments, the public at large or the specific recipient of an aid project. Accountability mechanisms could also be envisaged between the parties to international or bilateral development commitments. This does not require creating new human rights mechanisms to monitor the implementation of the Right to Development at the international level, but setting up suitable procedures to monitor the implementation of the “mutual commitments and shared responsibilities” agreed to in most development agreements for instance, the Millennium Development Goals). New Partnership for Africa’s Development may be the starting point for such a model on a regional level. Claims against the international community as a whole or against international organisations could also be assessed against existing multilateral agreements.

H. The Development Compact

The execution and implementation have always been one of the thorny issues not only for the states and their diplomats but also for the scholars from different streams like law and economics. As it has already been mentioned in the preceding Para that Prof. Arjun Sengupta one of the renowned economists was appointed as the Independent Expert on the Right to Development, he presented various reports to the Open Ended Working Group on the Right to Development, in which he endeavored to discover a manner in which
the Right to Development can be realised and executed without delay. It is with this objective in mind he proposed the ‘development compacts’ which should be entered into between particular countries and the international community to realise the Right to Development.\textsuperscript{150} According to Independent Expert, the Right to Development as a right to a particular process of development facilitates and enables all fundamental freedom and rights to be realised, and which expands basic capabilities, and the abilities of individuals to enjoy their rights. The Right to Development cannot be equated with the right to the outcomes of development, nor with the sum of existing human rights. It refers not just to the realisation of individual rights, but also to the way in which these rights are realised and development facilitated. The image of the Right to Development as a “vector” illustrates how the Right to Development is a composite right, which should be realised in a manner that takes into account the effects of component rights on one another, as well as the resulting outcome. The vector improves if there is an improvement in all the elements of the vector or at least in one element while no other one deteriorates. Translated into a human rights language, an improvement in the realisation of the Right to Development requires the promotion or improvement of at least some human rights, while no other deteriorates. This interpretation is useful in that it offers a way out of the traditional tension between on the one hand the declared interdependence and indivisibility of all rights, and on the other, the need to prioritise certain actions and policy areas given the resource and capacity constraints on developing states. The Independent Expert recommends to focus on the realisation of three basic rights: the right to food, education and health, which can be seen as constituting core elements in the realisation of the Right to Development, as long as no other right

\textsuperscript{150} Supra note 14 at 31.
declines, and a rights-based approach is followed. Though some commentators argue that this approach threatens the equality of all rights, it may be more realistic from a development perspective. It allows for a sequencing of rights-based development interventions, taking into account resource constraints and the need to prioritise. The Independent Expert's proposal for a development compact should be explored further but there are some concerns about duplicating existing processes, such as Poverty Reduction Strategy Papers (PRSPs), United Nations Development Assistance Frameworks (United Nations DAF) and United Nations Common Country Assessments (CCA).

(a) The controversy flanking the Development Compact

It is not that the development compact Proposed by Independent Expert is free from any criticism or controversies. It all depends on how the rights-based approach to development has been imbibed as a concept and practical reality. In the opinion of the Independent Expert the rights-based approach to development is basically an idea for empowering and at the same time it has to be ensured that the objectives of development should also treat human rights as an integral part of the development debate. In other words, the goals of human and social development are to be regarded as entitlements or as rights that can be legitimately claimed by individuals as right holders against corresponding duty holders, such as the state and the international community. This position is in sharp contrast with the rights-based approaches held by the most development agencies, International Financial Institutions and bilateral donors. They hold what may be described as an instrumentalist view of human rights. Poverty reduction is held to be the principal objective of development with human rights seen as a means to realize those goals, or principles which should be followed,
but it is not in themselves the objective of the development. Simply put, the objective of development assistance is to eradicate poverty, not principally to respect and promote human rights.\textsuperscript{151} In other words should the promotion and realization of human rights be the primary objective of development or should it be seen as a means to achieving development?\textsuperscript{152} However it must be recognized that the Independent Expert on the Right to Development has made a significant and optimistic contributions to the issue. His proposal for a “development compact” needs to be given serious consideration as it may lead to a politically acceptable solution. The “compact” may need to be further defined in a manner consistent with the current best practice, or presented as a theoretical framework to guide real partnership agreements.\textsuperscript{153}

1. Human Rights and Development: Some issues for a Realistic Realization of the Right to Development

A successful implementation and realization of Right to Development has close connection with a programme of development policies and assigning precise roles to all the agents of development. It can be ensured by identifying and fixing the obligations and duties of states, transnational corporations, local authorities, multilateral agencies, civil society, and the international community. According to the Independent Expert the present system for development co-operation has not succeeded in addressing the problem and almost failed to determine the duties and obligations of donors and of the international community. at the same time the Independent Expert has underlined the fact that the present policies to realise the Right to Development set condition to be fulfilled by the developing countries, which are not matched by “reciprocal obligations” of the

\textsuperscript{151} Supra note 147 at 96.
\textsuperscript{152} Ibid.
\textsuperscript{153} Supra note 14 at 8.
international community. The Independent Expert proposes the adoption of “development compacts” as an implementation of the Right to Development at the country level. By contrast, he suggests that more radical reforms may be needed at the international level.\footnote{Supra note 14 at 32.}

At the same time one has to also keep in mind that there are a number of similarities between the Right to Development and current development practice. A case could even be put forward to show that actions undertaken to realise “mutual commitments and shared responsibilities” for development could constitute the current manner in which the Right to Development is being implemented at the national and international levels. The main difference is the lack of a shared acceptance of the centrality of human rights for development. Whereas the Declaration on the Right to Development holds that development is a human right, the current development consensus does not put the realisation of human rights as the main objective of development.

The nature of “mutual commitments and shared responsibilities” in a partnership approach to development, and in particular how to monitor the implementation of these commitments by all parties, and what are the appropriate and effective accountability and enforcement mechanisms, for achieving the targets of mutual commitments and shared responsibilities.

The practical impact of human rights rights-based approaches to development, including distinguishing between human rights as an inspirational force and their function in facilitating the use of legal norms, and judicial, administrative or political enforcement mechanisms; The impact of globalisation on the realisation of human rights and the responsibilities of non-state actors, including international agencies; and How to enhance the accountability of
governments and donors to the beneficiaries of development assistance.

J. The Right to Development: An Unfinished Agenda

In the light of the above discussions based on different ideas and arguments it can be said that the Right to Development is still not proved to be sufficient to achieve the real progress. But with the evolution of the programmatic nature of the right in the recent year and moreover, through the important decision by the international community to establish the post of High Commissioner for Human Rights, having an explicit mandate in the field of the realisation of right to development, the opportunities for better implementation of Right to Development has received a new impetus. Although world has advanced in the 20th century for the cause of human rights and human development but at the same time 21st century poses a great challenge for human rights and human development in the changed scenario. Various questions are raised regarding the future of Right to Development. The developing countries had forced that declaration should not be end but means to the ultimate objective of codification and progressive enactment of the right to development as a principle of international law. Human freedom is the common purpose and common motivation of human rights and human development. The movements for human rights and human development have had distinct traditions and strategies. United in broader alliance, each can bring new energy and strength to other.

157 Supra note 4 at 2.
United Nations Human Development report 2000 suggests seven key features. Which are required for a broader approach in securing human rights. An analysis of the right to development requires an examination of the very nature of human rights and must therefore evaluate number of intrinsically complex areas. The right to development requires international acceptance of a human right design to benefit individuals, societies and nations in a holistic and interconnected manner.

In order to summing up the chapter and making human rights jurisprudence as a dynamic discourse about right to development, it needs to reiterate three important interconnected critical issues towards making it a viable and reflective discourse, first human rights discourse must bring change in its framework that it should move from the realm of abstract universalist rhetoric to practice oriented discourse, where critical awareness may constitute the core from local to global contexts and must be informed by language of radical people's movement across the borders of nation-state and at the same time it should bring the issues of inclusive politics towards

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158 Seven Key features for human development suggested by UNDP, Human Development Report 2000 are as follows:
- Every country needs to strengthen its social arrangements for securing human freedoms – legislation alone is not enough.
- The fulfillment of all human rights requires inclusive democracy.
- Poverty eradication is not only a development goal – it is a central challenge for human rights in 21\textsuperscript{st} century.
- Human rights are integrated worlds require global justice. The state center model of accountability must be extended to the obligation of non state actors and to the state’s obligations beyond national boarders.
- Information and statistics is a powerful tool for creating a culture of accountability and for realizing human rights.
- Achieving all rights for all people in all country will require action and commitments from the major groups in every society – Non Governmental Organisation’s, media and business, local as well as national government, parliamentarian’s and other opinion leaders.
- Human rights and human development can not be realized universally without stronger international action specially to support disadvantage people and countries and to off set growing global inequalities and marginalization.

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it's fold in the place of politics of exclusions because exclusion as principles of discrimination and marginality operates at different levels that includes the framework of regional, national and global contexts.

Another issue that can be reemphasized relates with role of global civil society where the sites of protests and resistances of various kind evaluate and inform the discourse of right to development as a core of human rights jurisprudence debates. At the same time some scholars such as Neera Chandhoke159 talks about the conceits of civil society because it conceals and appropriates the politics of human rights and different stake holders at local, regional, national and global levels create an illusion about growth and development markers but do not erase the poverty and other social and political disabilities which humans at lowest common denominator suffer from and gets marginalized in the processes of exclusion therefore, one needs continuous dialogical and communicative rationality to evaluate claims of human rights and rhetoric of right to development and translate these aspirations in real praxiological framework of human rights.

The third aspect of this debate about right to development needs our critical appraisal relates with questions of political will of different charters and mechanism through which these are supposedly being brought into the policy framework of institutions at various levels such as national and international contexts, here the efficacy of human rights jurisprudence needs to be informed by cultural and political pluralism of particular country and how it has generated a

debate among scholars, activists and policy makers of nation state. At the same time, it should be holistic and comprehensive to address different senses of marginality thus it might incorporate the discourse of right to development and issues pertaining exclusions based on social, political and economic disadvantages.