

**EVOLUTION OF CONCERNS ON RIGHT TO DEVELOPMENT:
FROM UNIVERSAL DECLARATION ON HUMAN RIGHTS
TO THE DECLARATION ON RIGHT TO DEVELOPMENT**

A Dissertation submitted to the **JAWAHARLAL NEHRU
UNIVERSITY** in partial fulfilment of requirement for the
award of the degree of **MASTER OF PHILOSOPHY**

1 9 9 9

SMITA RASTE

Centre for International Politics,
Organization and Disarmament.
School of International Studies
Jawaharlal Nehru University
New Delhi 110 067

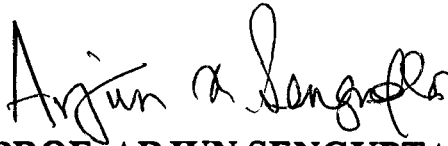



CENTRE FOR INTERNATIONAL POLITICS, ORGANIZATION & DISARMAMENT
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110 067

Gram : JAYENU
Phone : 6107676, 6167557
Extn.: 2349
Fax : 91-11-6165886

CERTIFICATE

This is to certify that the dissertation entitled, “ **EVOLUTION OF CONCERNS ON RIGHT TO DEVELOPMENT : FROM UNIVERSAL DECLARATION ON HUMAN RIGHTS TO THE DECLARATION ON RIGHT TO DEVELOPMENT**”, submitted by **SMITA RASTE** in partial fulfillment of the requirement for the award of the degree of **MASTER OF PHILOSOPHY** is her original work and may be placed before the examiner for evaluation. This dissertation has not been submitted for the award of any degree of this University or of any other University.


PROF. ARJUN SENGUPTA
(Supervisor)


DR AMITABH MATTOO
(Chairperson)
Chairperson
Centre for International Politics,
Organization and Disarmament
School of International Studies,
Jawaharlal Nehru University
New Delhi - 110 067

ACKNOWLEDGEMENTS

The work embodied in this dissertation was carried out under the supervision of Professor Arjun Sengupta. I am extremely thankful to him for his guidance during the course of this work. My association with him has been academically rewarding for which I am grateful to him.

I am thankful to all the teachers of the Centre for International Politics, Organisation and Disarmament, for giving me an opportunity to be a part of this School of International Studies and inculcating in me a deep interest in the study of International Organisation.

My deep sense of gratitude to staff members of the Jawaharlal University library, the Teen Murti library, the library of Indian Society of International Law, Sapru House Library (ICWA), and the United Nations Information Centre (UNIC), for their ready help in day-to-day work of this project. I am particularly grateful to Mr Kewal Kumar of the UN section of the Sapru House Library and Mr Manohar of the UNIC for their assistance in searching and making relevant United Nations documents available to me.

My special thanks are due to Mr Manavar Singh for computer typing the manuscript of this dissertation.

To my friends Naved, Jyoti, Kim, Gogoi, Nimphiya, Saurabh, Sumit and Ekta for their unstinted cooperation and support during the course of this study

Last but not least I owe a great deal to my mother and brother, Yash, for their unrelenting patience and support while working on this dissertation. I shall ever be indebted to my father for his constant encouragement and inspiration which enabled me to reach so far in my academic career.

New Delhi
July , 1999
21.7.99


SMITA RASTE

CONTENTS

ACKNOWLEDGEMENTS

| | |
|------------------|----------|
| Chapter I | 1 |
|------------------|----------|

INTRODUCTION

| | |
|-------------------|-----------|
| Chapter II | 20 |
|-------------------|-----------|

THEORIES OF RIGHTS

| | |
|--------------------|-----------|
| Chapter III | 39 |
|--------------------|-----------|

ORIGINS AND CONTENTS OF RIGHT TO DEVELOPMENT

| | |
|-------------------|-----------|
| Chapter IV | 65 |
|-------------------|-----------|

HISTORICAL FOUNDATIONS OF RIGHT TO

DEVELOPMENT

| | |
|------------------|-----------|
| Chapter V | 76 |
|------------------|-----------|

THE DECLARATION ON RIGHT TO DEVELOPMENT :

A BASIS FOR ACTION

| | |
|-------------------|------------|
| Chapter VI | 108 |
|-------------------|------------|

CONCLUSIONS

| | |
|---------------------|------------|
| BIBLIOGRAPHY | 114 |
|---------------------|------------|

CHAPTER I

INTRODUCTION

One of the significant aspects of contemporary international scenario is the prominence that the issue of human rights has acquired so as to become a focus of international activity. It has become an activity of concern not only nationally but internationally as well.

Historically speaking, the rudimentary concept of human rights for some authors goes back to the greek antiquity who considered that human rights should some under natural law¹, refined later to incorporate the concept of natural rights (which says that men have certain inalienable rights that cannot be taken, away from him, even if he fails to exercise them for a long period of time). The development of natural rights received further impetus through the revolutionary movements of seventeenth and eighteenth century rights of man in Europe and America, often regarded as the modern origins of human rights. The American declaration of 1776 drafted by Thomas Jefferson proclaimed the concept of natural rights. It says: "we hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and pursuit of Happiness - that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government

¹ Imre Szabo, "Historical Foundations of Human Rights", In Karel Vasak, ed., "The International Dimension of Human Rights [English edn Revised. and. ed. by Philip Alston] (West part, 1988), p. 11.

become destructive of these ends, it is the right of the people to alter or abolish it”².

Fifteen years later in 1789 the French Assembly adopted the “Declaration of Rights of Man and of citizens”. Article 2 of the Declaration provides that “the aim of every political association is the preservation of natural and imprescriptible rights of man”³. A number of these concepts such as universality, inalienability of these rights flow on to form the basis of the modern human rights law.

PRE SECOND WORLD WAR ARRANGEMENTS

Although the origins of modern human rights movement can be traced back to the revolutionary constitutionalism of the seventeenth and eighteenth centuries at the domestic levels, the phenomenon of manifestation of international concern over the promotion and protection of these rights under international law is relatively new and recent and is related to the second world war and the subsequent establishment of the United Nations Organisation [UNO], which proved to be a turning point in the history of human rights movement. This development can be described “as a reflection of the wider phenomenon: the increasing concern of people all over the world with the treatment accorded to their fellow human beings in other countries particularly when that treatment fails to come up to minimum standards of civilized behaviour”⁴.

² Scott Davidson, Human Rights (Buckingham, 1990), p.3

³ *ibid*, p.5

⁴ A.H. Robertson, Human Rights in the World - An Introduction to The Study of International Protection of Human Rights (Manchester, 1972), revsd edn, p.1.

Prior to this development, that is, the period before second world war, the concept of traditional international law was concerned only with the relationship between states. States were the only subjects of the international legal system. Individuals were subject to the authority of states as their citizens, “International law and relations between states were not generally concerned with such rights, which traditionally involved the relations of the citizen to the national state”⁵. The individual was not regarded as a subject of international law, and consequently his rights were also not regarded as a matter of international concern. A few exceptions to this concept however, still prevailed. One such exception was the ‘right of foreigners’ which were to be respected by a state in their territory. Such a condition would usually occur when an alien suffered an arbitrary treatment at the hands of state agents, such as the police and were not granted a proper solution by the concerned state. Such claims were however, not meant to seek redress for the citizen but rather to vindicate the rights of the state. A state was therefore, entitled to demand respect for its citizens abroad, for any maltreatment of them could constitute a violation of personal sovereignty of the state to which they belonged”⁶. Therefore, notwithstanding the position of aliens, “the general principle remains that before the entry of the United Nations (UN) charter into force, the individuals remained essentially at the disposal of their rulers”⁷. An exception to this however, was ‘humanitarian intervention’. It implied a right to military intervention by states so as to protect the population or a

⁵ J.F. Green, United Nations and Human Rights (Washington, D.C., 1956), p. 646

⁶ Paul Sieghart, The International Law of Human Rights (Oxford , 1983), p. 11.

⁷ Davidson, n.2, p.8.

portion of the population of another state if the ruler of that state treated their people in such a way that “shocked the conscience of mankind”⁸. This became an important method of protecting minorities in the nineteenth century (especially by Great Powers to prevent the Ottoman empire from persecuting minorities in the middle East and Balkans). But, the motives behind them were in most of the cases political and was used by the powerful military states to expand their zones of influence.

There was however, a beginning in the international law that occurred in the nineteenth century and early twentieth century, called humanitarian developments, to protect, if only indirectly, the rights of certain other categories of people. The most important amongst these were the agreements and treaties that aimed at abolition of slavery and slave trade. Another major achievement in the field of humanitarian law was the emergence of concern towards the sick and the wounded soldiers and prisoners of war (example, Geneva convention of 1864).

The post first world war peace arrangements brought further developments in this context. The peace settlement led to the establishment of the League of Nations. The League covenant however, reflected very little concern with the concept of human rights. The phrase “human rights”, which acquires a place of so much significance in the United Nations charter, found no place in the league covenant. The covenant drafters of the league were concerned mainly with the building up of a system for ensuring peace and security and pacific settlement of disputes and hence made no provision for human rights. Nevertheless, the league worked towards two

⁸ Davidson, no.2, p. 8

areas of concern to human rights, that is : the mandated territories and the minorities problem that emerged as a result of the redrawing of frontiers in 1919. The provision of the right of minorities provided for freedom of religion, equality before law with regard to civil and political rights. Under a procedure, the minorities could bring a matter to the notice of the council of the League. This aspect is important in the sense that it related to group rights and provided the basis for a right to petition to the group of individuals within the League of Nations. The second was the mandates system established by the league under Article 22. It stated that “Colonies and territories which as a consequence had ceased to be under the sovereignty of states which formerly governed them and which were inhabited by ‘peoples not yet able to stand by themselves under the strenuous conditions of one modern world’, were to be put under the tutelage of the advanced nations, who, as mandatories on behalf of the league, would be responsible for their administration under conditions which would guarantee amongst other things freedom of conscience and religion and prohibition of abuses such as slave trade”⁹.

Article 23 of the League stated that it would “endeavour to secure and maintain fair and humane labour conditions.... and entrust the league with supervision of agreements relating to the traffic in women and children”.¹⁰ These activities of the league reflect an international concern with the rights of individuals living in the territories governed by defeated enemy

⁹ John Humphrey, “The International Law of Human Rights in the Middle Twentieth Century”, In Richard B. Lillich and Hurst Hannum, ed., International Human Rights - Problems of Laws, Policy and Practice (Boston, 1995), edn. 3, p. 2

¹⁰ Ibid, p.3.

powers and growing concern with the right of self-determination of people and nations.

Like the league of nations, the peace settlements also created the International Labour Organisation (ILO) (1919). It adopted a number of conventions, dealing with the conditions of work, social security, trade union rights etc., and is often seen as a precursor of the system for protection of economic, social and cultural rights.

In essence, by the second world war the international law came to recognise “a whole series of rules and institutions, the effect of which was to protect the rights of individuals and groups, even though in the dominant thereby, the individual was neither a subject of international law nor directly protected by it”¹¹. The advances that were made however, required an extension to all possible basic rights of man.

It was not “until after the cataclysmic events of the second world war that international human rights law began to develop in a coherent and recognisable way”¹². The traumatic experience that occurred in the wake of the atrocities committed against humanity by Fascist Italy and Nazi Germany led to “an extreme deterioration of the relationship between man and state”¹³. Not only the misery that it inflicted was brought to light but it also revealed that the traditional international law was inadequate in developing procedures that could protect the individual from his government. “These acts aroused the unanimous indignation of all those in

¹¹ Humphrey, n.9, p.5

¹² Davidson, n.2., p.11

¹³ Szabo, n.1, p.21

the world who believed in society's capacity for improvement"¹⁴. Public opinion arose demanding protection of human rights. It came to be recognised that leaving the protection of human rights of man to the internal jurisdiction of states was futile. It was thereby, decided by the Allied Powers, therefore, to include the protection of human rights in any post-war settlement. It became a pre-requisite to the establishment of a just and stable world order under the auspices of UNO.

This effort was inspired in 1941 message of U.S. President Roosevelt in which he delineated his 'Four Freedoms' that is, Freedom of speech and expression, Freedom of worship, Freedom from want and Freedom from Fear, which was given a general endorsement in the Declaration by UN of 1st Jan, 1942 when, twenty-six nations agreed to subscribe to the following in the preamble: "Being convinced that complete victory over their enemies is essential to decent life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands"¹⁵.

Yet, the Dumbarton Oaks conference that had met to draft the constitution of UNO gave only a brief reference to the promotion of human rights. It was then, at the San-Fransisco conference that a decision was taken to include detailed provisions of human rights. Subsequently, the charter came to embody seven specific references to human rights. The historical context in 1945 had changed and "the reference to human rights run throughout the charter like a golden thread"¹⁶.

¹⁴ Szabo, n.1, p.21

¹⁵ Green, n.5, p.654

¹⁶ John Humphrey, Human Rights and the United Nations: A Great Adventure (New York, 1984), p.12

The UN thus, brought a significant change by revolutionizing the concept of human rights. This is clear by the growing recognition of the concept by the U.N. Charter¹⁷. The preamble of the UN says, “We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our life time has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in one equal rights, in the dignity and worth of the human person, in the equal rights of men and women of nations large and small”. The UN charter reflects the urge to save people from war and thus, a concern for their rights as human beings. But many of its members felt that the charter reflected an absence of a clear definition of the kinds of rights it offered. This was seen as a defect by many, thus, the responsibility of preparing such a document referred to the “international Bill of Human Rights” was entrusted to the UN. It had been decided by the end of 1947 that UN action in the field of human rights, would consist of two major documents: a declaration of general principles; a convention of legal binding obligations. The responsibility was fulfilled by the adoption of the Universal Declaration on Human Rights on 10th December, 1948 thereby providing a beginning for a real history of human right at the international level.

The declaration was adopted without a dissident vote with 48 votes in favour none against and 8 abstentions (Byelorussian SSR, Czechoslovakia,

¹⁷ Articles 1 (3), Article 13 (b), 55(c), 62 (2), 68, 76 (c).

Poland, Saudi Arabia, Ukrainian SSR, USSR, Union of South Africa and Yugoslavia) by res. 217 (III) of the General Assembly¹⁸.

The 1st article of the Declaration expresses the basic underlying philosophy of the entire document: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"¹⁹. Article 2 sets forth the principle of equality and non-discrimination with relation to enjoyment of such rights. Article 3 provides for three inter related rights namely right to life, liberty and security of person. Article 4 to 21 introduce a number of civil and political rights that have been identified in a number of constitutions throughout the world. They include: prohibition of slavery and slave trade, freedom from torture or cruel, inhuman degrading treatment, the right to recognition as a person before the law, freedom from arbitrary arrest, detention or exile etc. Article 21 defines political rights in three parts: the right to take part in the government of one's country, the right of equal access to public service, and a provision that people's will be the basis of authority of any government. Article 22 opens up the second basic element of the declaration encompassing a series of economic, social and cultural rights. These include: the right to own property; to social security, right to equal pay for equal work, to just and favourable remuneration, right to an adequate standard of living; right to education etc. Article 28 to 30 encapsulates the idea that individuals have duties along with rights. Article 29 prescribes these duties as²⁰.

¹⁸ Robertson, n.4, p.26.

¹⁹ Green, n.5, p.671

²⁰ Satish Chandra, International Documents on Human Rights (Delhi, 1991), p.10

- (i) Everyone has duties to the community in which alone the free and full development of his personality is possible;
- (ii) These rights and freedom may in no case be exercised contrary to the purposes and principles of United Nations.

Article 30 states that, “nothing in this declaration may be interpreted as implying for any activity or to perform any act aimed at the destruction of any of the rights and freedom set forth herein”²¹.

The declaration however, did not create any legally binding obligations on member states. This is clear from the manner in which a Declaration is adopted in the UN. It is adopted by a resolution of a UN organ, General Assembly [GA] which have the force of recommendations only. In the final debate on the subject in the General Assembly the chairman of the Commission on Human Rights (CHR) stated that:

“In giving our approval to the declaration to day, it is of primary importance that we keep already in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations²². While, the declaration was not conceived of as a legally binding instrument it has great moral and political authority. Mrs Roosevelt stressed that the Declaration was a statement of basic principles to serve as a

²¹ Chandra, n. 20, p.10.

²² Green, n.5, p. 670.

common standard of achievement for all nations. It might well become the Magna Carta of all mankind. Mr. Cassin (France) emphasized that the Declaration had a wide moral scope while it was less powerful and binding than the convention, it was a development of the charter which had brought human rights within the scope of positive international law²³. Moreover, in the UN practice a declaration is a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated such as the UDHR. The problem of creating a treaty or a convention was nonetheless, solved by the adoption of two separate covenants on Economic, Social and Cultural rights and civil and political rights in 1966 and entered into force in 1976. The long time taken in discussion and negotiations on the two covenants owed to the differing ideological approaches of the members over the scope and nature of treaty on human rights. On the one hand, the US and countries of Western Europe favoured limiting the covenant to a few civil and political rights. The Latin American and Asian countries on the other hand, felt that a statement of economic, social, cultural rights be formulated into a covenant, an approach supported by the Soviet Union. In 1950 the Third World countries adopted a Yugoslav amendment by which economic, social and cultural rights would be included in the covenant. The vote was 23 - 17 - 10 abstentions. The vote in the plenary also received a overwhelming response (35, 9, 7)²⁴. As a result the CHR began to draft Economic, Social and Cultural rights in 1951. In 1952, the General Assembly decided for two covenants. The two

²³ Louis B. Sohn, "The Universal Declaration of Human Rights: A Common Standard of Achievement? The Status of Universal Declaration in International Law", Journal of International Commission of Jurists (Geneva), Vol. 8 (December, 1967), p. 22.

²⁴ Green, n.5, p.680.

covenants begin in identical terms, setting forth the right to self-determination. Article 2-5 constitute part II of the covenant. It enumerates the steps that must be taken for securing these rights, both individually and through international assistance. Part III sets out the rights which the covenant is meant to protect.

The UN at the same time created certain legally binding instruments to deal with certain other aspects of human rights such as treaties on prevention and punishment of genocide, suppression and punishment of apartheid, prohibition of practice of torture: matters relating to child and refugees etc. In the recent years however, there has been a movement towards inclusion of certain 'new rights' in the human rights agenda and thereby, extending its scope beyond those found in the UDHR and the two covenants. These new rights include right to development, to healthy environment, humanitarian assistance, to common heritage etc. Karel Vasak (the former UNESCO director) forged the concept of a 'third generation' of rights as applying to the new rights, wherein the first generation implied the civil and political rights and the second generation implied the economic, social and cultural rights. Infact, Vasak has sought to classify these rights further according to the French revolutionary slogan of liberty, Equality and Fraternity. Liberty represents the civil and political rights in the right of the individual to be free from arbitrary interference by the state. Equality corresponds to the protection of economic, social and cultural rights, the right to the creation of positive conditions by the state which will allow him to develop their maximum potential. Fraternity (in the sense of solidarity and brotherhood) represents the element on which the Third generation rights are predicated. Therefore, they are also known as the

'solidarity rights'. These are rights asserted by the developing countries to aim at reorganisation of the international order.

"The metaphor of generations, however, is a most troubling one. Biological generations beget, and must precede, one another. Such a reading of the metaphor would suggest that first generation civil and political rights must be established before economic and social rights, which themselves must precede solidarity rights ..."²⁵. The concept of generations however, is of relevance and meaning when it is used to identify the trend that has measured the human rights evolution and is not used to establish hard and fast categories.

A major feature of these rights, as mentioned earlier on, is solidarity. The charter of the United Nations introduced two major developments. "These were the metamorphosis of international law from a law of co-existence to that of cooperation", and "mankind as a proper subject of international law"²⁶. The implication is that the international law is no longer merely a tool to reflect international conduct but also to influence it to achieve some goals. Thus, it directs the actions of states by imposing upon them a 'duty to cooperate', also called as duty of solidarity to promote human welfare.

While a sense of responsibility, duty and collective action is required to realize even the other rights, it is a significant feature of the third generation rights because "they are inconceivable without a broad sharing

²⁵ Jack Donnelly, "In Search of the Unicorn" *The Jurisprudence and Politics of Right to Development*, California Western Journal of International Law (California), Vol. 15, No. 3 (Summer 1985), p. 492.

²⁶ Roland Rich, "The Right to Development as an Emerging Human Right" In Virginia Journal of International Law (Virginia), Vol. 23, No.2, (Winter, 1983), p. 290

of objectives and commitment to certain forms of actions”²⁷. These are certain planetary concerns such as peace, development, ecological balance which have solidarity as a pre-requisite to action consistent with the needs they represent, as inherent to their very nature. In an inaugural lecture to the tenth study session of the International Institute of Human Rights in July, 1979, Karel Vasak said that the new human rights are “new in the aspirations they express, are new from the point of view of human rights in that they seek to infuse the human dimension into areas where it has been missing often, having been left the state, or states... they are invoked against the state and demanded of it, but above all (and herein) lies their essential characteristic) they can be realized only through the concerted efforts of all the actors on the social scene: the individual, the state, public and private bodies and the international community”²⁸. Looking back to the evolution of human rights agenda, one may observe that the dominating trend in it has been that of a focus on civil and political rights, that is - right to life, liberty, freedom from arbitrary arrest, freedom of information and speech, security of person etc. but there is more to the concept of these rights than a mere concept of civil and political rights. It is necessary to go beyond them and discover how men survive. It is necessary to entitle them to certain rights in socio-economic matters so that they are able to lead a dignified life and develop their potential to the fullest. In this context the socio-economic and cultural rights become significant.

²⁷ Stephen Marks, “Emerging Human Rights : A New Generation for the 1980s?” Rutgers Law Review (New Jersey), Vol. 33, No. 2, (Winter 1981), p. 441.

²⁸ Ibid, p.441.

However, living under a state of perpetual underdevelopment, the third world countries have not able to provide with the basic conditions of life to their people. As a result, in these conditions, states Keba M'Baye (A Senegalese jurist) that in many African countries the governments struggling in to combat famine, illness, ignorance and poverty tend to overlook the classic liberties upheld by the West. As a result, of these conditions the structure of international society may become such that may impose serious limitation on enjoyment of human rights by all. Thus, in 1972 M'Baye deduced the concept of a 'human right to development' as a corollary to other recognized human rights. The relationship between development and human rights has occupied a prominent place in the human rights agenda since the first UN International conference on Human Rights in Teheran in 1968. Since then the debate on development has been carried out under the concept of right to development.

With a historical background of colonialism, foreign domination, neo-colonialism, the third world countries see under development as a result of these forces, which led to more and more economic dependence of the developing world over the developed world. As a result, these countries has been demanding the establishment of a New International Economic Order (NIEO) for their development. With the opposition of the developed economic states, their demands got linked up with the human rights to development. As a result, the General Assembly adopted resolution 34/46 in 1979 which states that "the right to development is a human right and that equality of opportunity for development is a prerogative both of nations as of individuals within nations"²⁹ [Article 8].

²⁹ Philip Alston, "Preventions versus Cure as a Human Rights Strategy", In International Commission of Jurists, ed., Development, Human Rights and Rule of Law (Hague Conference, 1981) (Oxford, 1981), p. 101

Moreover, another trend along with evolution of human rights concept has been the changing pattern of the concept of development itself. The partial approaches to development in terms of increase in Gross National Product (GNP) or economic growth led to depressing results in the first UN development decade. As a result, it came to be endowed more with social and cultural aspects and with the realization of human rights of people. The development process was to be directed to the individual in fulfillment of his rights. But, then fulfillment of all rights of an individual leading to his full development 'is impossible in countries where lack of resources and underdevelopment prevail. As a result, right to development becomes a high priority for them.

With a typical historical background then, these countries have been demanding reparations from the colonial nations. Under the right to development this has acquired the form of duty of solidarity (a feature of third generation rights) that becomes more pronounced in this case. This duty of solidarity implies then, that states cooperate with each other for development. Moreover, with increasing interdependence of nations on one another, contribution in development becomes a duty of all, for a harmonious global development.

From the point of view of developing countries it leads to obligations especially on the developed states, international organisations and international community. Moreover, with human person at the centre of development process, this duty of solidarity become more significant. Development promotion then, becomes a primary moral responsibility. It is the condition that patterns social life and is thus, requirement to be fulfilled by every obligation.

Relevance of the study

The dissertation therefore, studies the origins and relevance of right to development in the context of developing countries.

The relevance of the study lies in the topic under study itself. “Human Rights” and “Development” are two burning issues facing the survival of humanity today. Both are subjects that speak of establishing world order on the basis of justice, equality and cooperation of all that ultimately is beneficial to the human person. The topic then provides ample scope to study two aspects, in an integrated approach. The objective of the study is to analyse the rise of right to development as a human right, its significance for the developing countries and the role of the international community in the adoption and implementation of the right.

Method of Study

The method of study, undertaken in approaching this topic is mainly historical and descriptive since it traces the evolution of the human right to development, yet analytical as it assesses its nature, substance, ramification and impact on the international world order.

Source of Material

As per the nature of the topic under consideration, much of the work done is based on primary sources especially the United Nations documents as the apex international organisation. The secondary sources include the books articles and periodicals pertaining to human rights and development.

Scheme of Chapterisation

There are six major chapters in the dissertation through which I have tried to cover all related and essential aspects of the right to development as a human right.

The first chapter is titled as "Introduction" in which I have tried to describe how the concept of human rights has become significant in the contemporary scenario, and has come to acquire differing connotation.

Thus, since the 1970s the right to development as a human right has acquired lots of importance incorporating the concept of duty and solidarity and gives a brief summary of what it entails for the developing world and the international community.

The second chapter is a brief exposition of various theories of rights and their significance for human rights. It highlights the fact that concept of rights has always been inclined towards civil and political rights but that there is more to it in form of the economic, social and cultural rights. In the end it tries to assess the position of the right to development in human rights law by focusing on three major theories.

From the theoretical comprehension, the dissertation moves forward to the third chapter to establish the nature and substance of right to development focusing at the same time on its origin. The chapter reflects on the fact that though these proclaimed human right are universal in nature they have emerged out of a certain historical context. The rights to development then can be regarded as a result of the radical change brought about by the independence of Asian and African nations on the world scenario. As a result, they have had a significant role to play in shaping the international law. Their struggle then can be traced to that of self-determination, New International Economic Order (NIEO) and then, the right to development to enable their people to enjoy civil & political rights and be able to provide them with the enjoyment of economic, social and

cultural rights. The achievement of a NIEO then is essential to undo the effects of underdevelopment faced by these countries so as to realise the economic, social and cultural rights of their people as their main priority. From NIEO they then moved to entrench their demands specifically in the right to development, thereby touching a structural approach to human rights. It thereby, focuses on how the changed power structure can have an impact on a vital agenda of the international community such as human rights and development..

Chapter four traces the foundations of the right to development in terms of the relationship between human rights and development and the duty of solidarity it entails in the various texts and instruments adopted till date providing a sound basis for the demands under the said right.

While, the previous texts do represent a kind of reflection of the right, the need to specify the right and this duty of cooperation clearly into a real instrument led to the establishment of the working group on Right to Development whose work led to the adoption of the Declaration on Right to Development in 1986. The Chapter then journeys through various stages of working group sessions focusing on their reports and then analysing the declaration as a whole. It also then analyses the different debates of member states for the same. The final and the fifth chapter is "Conclusions" that presents a summary and concluding remarks of the present work.

CHAPTER II

THEORIES OF RIGHTS

“The concept of rights has become one of the most reputable and positively connoted in political theory”¹. The latter half of the twentieth century has witnessed a movement towards ‘human rights’. Rights are nothing but claims that achieve some kind of an endorsement, legal rights through a system of law and human rights by an international order or a widespread sentiment. “Claiming a right makes things happen and a claim is essential to many of the most important uses of the right”². Human rights, in this context then can be described as claims that are of an ultimate or final nature in the realm of rights. They are described as moral rights that are owed by each human being to the other by virtue of his being human. The expression human rights has come into widespread recognition with the second world war and replaces the concept of natural rights that had become disreputed in the eighteenth century.

Widespread acceptance of the concept of human rights does not give away however, much on the basic questions regarding these rights (related to its definition and scope) It is not yet clear whether they are attributable to or are to be viewed as moral, divine, whether their basis is social contract theory, or as a priority for generating happiness. These queries may lead as to undergo a brief survey of various theories of rights that may be of some relevance to human rights.

¹ Micheal Freedon, Rights (Milton Keynes, 1991), p.1

² Jack Donnelly, The Concept of Human Rights (London, 1985), p. 3.

THEORY OF NATURAL RIGHTS

One of the most celebrated theories of rights is that of 'natural rights'. Infact, historically speaking, the concept of human rights has descended from that of natural rights. In the seventeenth and eighteenth centuries it was the conception of natural law that led to the rise of natural rights theory. The Romans gave the earliest of the authoritative statements on the doctrine of natural law. It was concluded of as an ideal or a standard fixed by nature to the discovered and gradually applied by men. "Natural law then implied a body of rules to governing human conduct, which were conceived as part of a natural order of things"³. What was conceived of as law was that which was created by God. Man was a part of God's order of things and was thus, intended to follow a particular pattern governing his life. But, man was subject to this law in a special way. It was discovered through man's reasons which made him fully aware of the God-created natural law to which he must confirm to. While, there were others rules present as well, but natural law of all was the one that put forth those basic rules through which he could structure his relationships with his fellow human beings. Throughout the seventeenth century this concept of natural law was refined and translated into natural rights of man by the most celebrated exponent of natural rights, John Locke. In the context of the Glorious Revolution (1688) Locke argued that "certain rights 'self evidently' belong to the individual as human being"⁴. In this period the doctrine of natural rights and natural law came to be associated to the contract theory of state. Hobbes viewed natural rights as those which an individual should enjoy in a state of nature. His state of nature was one of self-preservation which he conceived of as natural right of

³ Peter Jones, Rights : Issues in Political Theory (London, 1974), p. 74

⁴ Burns Western, "Human Rights", In Philip Alston and Henry J. Steiner, ed., International Human Rights in Context: Law Politics and Morals (Text and Materials), (Oxford, 1996), p. 167.

TH - 8008



all. But, this did not impose any duties upon others. It entitled each to destroy and attack others. "His state of nature was a state of nature of war, in which mutual threat meant that the right of nature gave everyone a right to everything; even to one another's body"⁵. With their entry into contract to create a political authority could men divest themselves of their rights. Thus, with the creation of political society, men renounce their natural rights. The Lockean tradition is in sharp contrast to the Hobbesian tradition. In his conception natural rights explain not only the origin of political authority but also defines its duties and limitations Locke's fundamental law of nature says that "No one ought to harm another in his life, liberty or possessions"⁶. He then restated it in terms of the rights it bestowed and the duties it imposed: each individual had a natural right to his life, liberty and property and each individual had a duty not to harm the life, liberty or property of others. In Lockean tradition, then the law of nature provided the basic moral rules by which man could conduct one's life. The Lockean state of nature was one of peace and harmony and was not marked by conflict. Conflict emerges because these men are not able to decipher the laws of nature provided to them by God, and this leads them to establish political authority. The establishment of political authority does not imply that men divest themselves off their natural rights but rather they carry them along with them in the political society. They possess the natural rights to life, liberty and property and a sort of an 'executive right of nature' to protect their rights. After the establishment of the political authority they give up this executive right to the established authority so that it protects all their rights in a better way. Life, liberty and property are the standard natural rights but at times they have also been interpreted to claim specific liberties. For

⁵ Jones, n.3, p. 74.

⁶ *ibid*, p. 75

example, right to freedom of opinion, right to free communication of thoughts and opinions etc. What is a significant characteristic of these natural rights is the fact that as fundamental rights they were attributable to individuals and were negative in character. They were 'keep out' notices⁷, that is, right of an individual to property, religion etc. without any interference from the state. This liberal framework had great influence on the revolutions in seventeenth and eighteenth century revolution in the western world (North America and France).

In sum, the idea of human rights, called as natural rights in that period, played a key role against political absolutism and arbitrary rule. They were rights considered as inalienable, eternal and unalterable and thus, came under a lot of criticism and powerful attack. The major aspect of the theory that attracted criticism was that right can be 'natural'. They have been rejected as anarchical nonsense⁸, their basis was questioned on the fact that they did not have any scientific basis with regard to questions such as where do rights come from. But, nevertheless we may speak of natural rights on the grounds that firstly, if we say that people have certain moral rights which are not embodied in the positive law, they may be called natural rights for their distinction from man-made artificial laws. Secondly, they may be called as natural rights on the grounds that they are rights that are been possessed by human beings. The theory of natural rights is nonetheless, important because in twentieth century the term human rights expresses the fact that men have certain inalienable rights by virtue of their humanity and thus, endures natural rights in some way. But, while, the functions of natural rights was meant to serve to legitimize a particular national state, Human rights have

⁷ Jones n.3, p. 79

⁸ Louis Henkin, The Rights of Man Today (Colorado, 1978), p. 15

become an effort to develop the standards of achievement with respect to citizen's rights within an international community.

THEORY OF UTILITY

The condemnation and attacks on the natural rights theory led to the rise of David Hume united with Jeremy Bentham. Bentham wrote "natural rights is simple nonsense; natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts"⁹. Out of the two it was Hume who first made a distinction between the 'is' and 'ought' that has led to a distinction between naturalist and positivists school. Firstly, 'is' is something based on facts that can be proved empirically and the 'ought' is the category of morality which cannot be proved to exist objectively and on which people may have different opinions. According to Hume only the former category is capable of scientific enquiry and thus forms the basis of legal system. The argument by Hume was given a humanitarian face by Bentham's School of Utilitarianism.

Two major ideas underlying utilitarianism is that it is hostile to the idea of natural rights and speaks in favour of legality and institutionalism of rights. Utilitarianism implies that the only sound and fundamental basis for normative estimation is the promotion of human welfare"¹⁰. The theory is based upon the concept of utility or the ultimate good. It states that utility is the only ultimate good because all else that is good has value only because of the fact that it leads to the promotion of the ultimate good. Utilitarianism then as a social doctrine aims at maximising social utility through a social institution or public policy. The famous formula of Bentham that every

⁹ Western, n.4, p. 169

¹⁰ David Lyons, "Utility and Rights", In Jeremy Waldron, ed., Theories of Rights (New York, 1984), p. 110

society must aim to achieve is that of the 'greatest good of the greatest number'. As a doctrine governing the behaviour and conduct of individuals, this doctrine states that the individuals must act in a way that leads to the maximization of the well-being of the humanity at large. The utility of the individual would then be assimilated into the utility of the humanity but a good utilitarian individual would seek impartiality in the utility of himself and that of others.

The concept of utility however, has attracted a lot of controversy. A major aspect of this controversy is that the concept of utility is in conflict with the concept of rights. This is because the theory considers utility as the major source of value. That which promotes utility is good and takes a widest possible view when promoting it. But, a source of utility for one may not be the same for another person. As a result, we have to weigh the utilities and disutilities and take into account the number of people that will be affected by either of the two aspects. Utility then, in any term remains the criteria that decides what is good and right and this gives way to quantitative rather than qualitative discrimination to be made between various utility concerns.

"Rights theorists on the other hand, discriminate between the moral status of different goods or preferences"¹¹. Rights theorists when they tend to discriminate about what people have a right to and what they do not, adopt an "objective moral stance, in that the status they accord to goods and preferences satisfactions is not geared wholly to individual's utility aims"¹².

The second difference between utilitarian and rights concerns the pattern of decision making pertaining to individuals. The utilitarian theory

¹¹ Jones, n.3, p.52.

¹² *ibid*, p. 52.

is based on a maximising strategy. Based on an aggregative policy, the aim should be to maximise social utility. Rights theorists however, reject this aggregative approach. "To attribute rights to individuals is to give them moral claims of special standing"¹³. Having a mere preference for something with others having a competing preference is an easier path to assess the situation in utilitarian terms. But, having a right to something and then to decide between preferences by a calculative way of mere satisfaction of preferences is difficult. "Rights therefore, constitute considerations of a special nature, considerations which stand in the way of a simple utilitarian calculus and ascribing rights to individuals is one way of preventing their lives being wholly at the mercy of that calculus"¹⁴.

For example, the case of a freedom of expression, has been favoured by both the utilitarians and the rights theorists. But, in case when a minority group wants to express its views which are not liked a larger majority of people, as far as, utilitarianism is concerned, after its calculations, it would prefer that minority's freedom to propagate views be eliminated so that the greater social good is maintained. The rights theorists, on the other hand would follow the position that a minority has an equal right to express their views.

Utilitarianism thus, stands in conflict with the concept of rights. Infact, it leads to a kind of total repudiation of the concept of rights itself. If the concept of rights gets subordinated to the concept of utility then the former loses its significance entirely. As is clear utility is a source of goodness for greater number of people but what is a source of utility for one may not be a source of utility for others. Secondly, the source of Bentham's

¹³ Jones n.3, p. 52

¹⁴ *ibid*, p. 53

thesis lies in the expression of preferences of the majority. This can lead to tyrannical absolutism of the majority over the minority leading to the oppression of the minority. The utilitarian theory then does not contribute much to the rights concept, in fact, it only comes into conflict with it. The major achievement of this school was that it was able to create a separate field of law from that of natural law as scientific. In fact, Rights and utilitarianism can be regarded as competing concerns for limiting illegitimate state actions. Not much attention is paid to the minorities in a state whose preferences may not be represented by majority and thus, can be seriously become disadvantaged in terms of their rights. A major criticism of the utilitarian school emerged in the writings of John Rawls, Dworkin and Nozick.

THEORY OF JUSTICE

A celebrated theory that emerged as a consequence to utilitarian criticism was that of Rawls's Theory of Justice (1971). Justice, in his theory is a method used to distribute rights, duties and benefits, burdens among individuals within society. Thus, "Justice denies that the loss of freedom for some is made right by a greater good shared by others. Therefore, in a just society the liberties of an equal citizenship are settled; the rights secured by justice are not subject to the political bargaining or to the calculus of social interest"¹⁵. Rawlsian theory is based on a hypothetical social contract in which all persons are in what he calls an 'original position' of equality regarding the distribution of benefits and freedom. Each of these men however; decide upon the principles of justice that would structure the society behind a 'veil of Ignorance'¹⁶. Behind, this veil the individuals, have

¹⁵ John Rawls, A Theory of Justice (Oxford, 1971), p. 3

¹⁶ *ibid*, p.136

no knowledge of the kind of individuals they are or what positions they occupy in the society, so much so that they are not even aware of their conceptions of the good. This kind of a condition is created so that the resulting decisions reached in this position are “fair” between different kind of individuals.

Under these conditions the individuals have to decide upon the distribution of primary goods (goods that are according for all to achieve their life plans). These include liberty, powers, opportunities, income and wealth, and a sense of self-respect. Under these conditions, the individuals who are rational persons and ignorant of their own potentiality decide upon two principles of justice. The first is that “every person is to have an equal right to the most extensive system total system of equal basic liberties, compatible with a similar system of liberty for all¹⁷.

Second, social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity¹⁸.

The principles are arranged in a lexical order so that the first takes priority over the second, and in the second principle 2(b) is prior to 2(a). Thus, in Rawlsian system prevails a general conception of fairness and equality such that all primary goods are to be distributed equally unless an unequal distribution leads to the advantage of the least favoured. The priority principle seeks that liberty is sacrificed only for the sake of liberty.

¹⁷ Rawls, n.15, p. 302

¹⁸ *ibid*, p.. 302

Thus, for Rawls the pre-eminent right is the right to liberty so that all other rights are subordinate to it. Under such system, liberty can be curtailed only if it leads to a strengthening of the total system of liberties shared by all or if a less than equal liberty is acceptable to the people, so deprived. What are the rights then that are established by these principles? of the two principles, it is the first one that gives straightaway a foundation for rights. This system of basic liberties encompasses right that are associated to a liberal democracy, such as the right to vote and to be eligible for office, right of freedom of thought, right to hold property, freedom from arbitrary arrest and the other rules normally associated with the rule of law¹⁹. Justice implies that each citizen is equally entitled to each of these basic rights. According to Rawls, although some citizens may actually possess the most extensive system of these rights they may not be able to enjoy them as a result of poverty, ignorance and lack of means which could be counted as constraints liberty. These things affect the worth or value of right that the first principle defines. Freedom as equal liberty (or right) is the same for all but some have greater authority and wealth and thereby greater means to achieve their life plans or aims. This disparity then, is to be achieved through the first part of the second principle which he calls as 'difference principle'. Under this principle an equal distribution of resources is to be preferred unless an unequal distribution of resources leads to the betterment of the disadvantaged section. This principle of distributive justice then overcomes the enjoyment of rights by all. The second principle of Rawls does not give rise to any sort of rights clearly. The principle of fair equality of opportunity in terms of rights can be regarded as entailing rights, such as right to a free education or to a free choice of occupation. Even, the difference principle of

¹⁹ Rawls, n. 15, p. 61

Rawls cannot be interpreted wholly in terms of rights. “The closest the difference principle come to generating something like economic rights is by way of its requirement that inequalities are allowable only if they work to the advantage of the worst-off group, so that provision for a minimum level of well being for all is built into the economic arrangements of the just society; but even that is likely to be a shifting minimum and is therefore, not easy to formulate as a right”²⁰.

As a theory generating rights, one has to observe the effectiveness of the contractual approach to rights.

The initial situation that Rawls creates for the individuals to reach upon decisions behind a veil of ignorance is highly evocative way of confronting people with the demands of fairness. But, the two principles and the rights that they give rise to is done by the moral basis that structures the contractual process rather than by the contracting process itself. For example, the equality of the individual is not a principle that is derived from the original position but rather is a position that is built into the original position such that all individuals have an equal place in the contract. The principle that a just society is to be established in such a way that the contractors are not be influenced by conditions of race, gender, natural ability so much so that he puts them behind condition of veil of ignorance. Thus, it is in a very limited manner that we can subscribe rights as based on a contract. These rights thus, are not as contractual as they are portrayed by Rawls. Infact, they can be described as natural rights, since he also makes use of the phrase ‘natural duties’ which means those duties which we can be said to have ‘naturally’ that is, we have them even if we do not consent to them or only if they are created by law. Rights in Rawlsian theory are

²⁰ Jones, n.3, p. 104.

conceived as rights meant for citizen of a political society rather than for the humanity. Despite this, his approach can be applied to the entire humanity since many represent rights that need to be enjoyed by all citizens in modern states. Moreover, with justice, as a basis of society human rights in these terms can be held in avoiding gross injustices prevailing all over the world.

Another major theory of rights that emerged in criticism to that of Bentham's is Dworkin's theory of Rights as 'Trumps'. "Rights as 'Trumps' are held by individuals over some background justification for political decisions that states a goal for the community as a whole"²¹. This means that collective goals are not enough as a justification for denying them what they wish as individuals. This definition of rights counters the utilitarian position that individual's preferences must give way to those of majority. While, he accepts Bentham's principle that everybody counts for one and nobody for more than one, but according to him the principle of aggregating the preference of individual leads to utilitarian deviation from the central liberal principle that individual must be treated as individuals. According to Dworkin, the individuals preferences about other people's preferences distorts the hedonic calculation of Bentham. This happens because though we may assign greatest number of liberties to all, we may be constrained by preferring those people whose preferences we want to be fulfilled. This leads to a violation of the principle of equal respect and concern for all. The system of rights then acts as 'trumps' to avoid deviations in hedonic calculations. While, his theory of rights is necessary, it does not give us any idea of what rights one has, where do they come from etc. Dworkin believes that there is no general right to liberty but there are certain specific rights such as freedom of expression, association, religion, etc. These rights in his

²¹ Ronald Dworkin, "Right as Trumps", In Waldron, n.8, p. 153.

view are based upon the right to equality. Thus, whenever a claim is made it must be based on the fundamental principle of equality. Along with Dworkin and Rawls, Nozick also emerged as one of the notable critics of utilitarianism. Nozick's theory postulates a state of nature, wherein individuals combine to form a minimal state. "This minimal state is not only based on certain moral precepts but is itself one of those moral precepts"²². A state functioning as more than that of a minimal state would lead to deprivation of its citizens of more liberty which would then constitute immorality. The other moral bases of the state is the right not to be killed, assaulted, right to acquire, retain and dispose of property, the right to do so as one pleases as long as it does not violate similar rights of others. The role of the state is limited only to the enforcement activity such as to punish violators, settle their disputes etc. If the state were to enter into other areas of activity such as providing welfare, or redistribution of wealth, it would exceed its functions and would become immoral by depriving the citizens of their liberty to act. Nozick's theory is only theoretical and its application to the capitalism states would lead to entrenchment of existing social inequalities. Nozick main criticism for utilitarianism is that it sacrifices the individual liberty for majority's sake. Nozick's theory is highly individualistic with a freedom of action that maximises their liberty with a condition of a minimalist state that he constructs as a necessity. In this century, the concept of rights has come to imply the concept of human rights. These are rights that people are said to possess whether they are embodied in systems of positive law or not. Secondly, they can be spoken of as natural rights that people possess in their natural capacity as human beings and not as citizens of a state and are universal in application so that

²² Scott Davidson, Human Rights (Buckingham, 1990), p. 32.

they are attributable to citizens of all states. This then enlarges the scope of natural rights which were conceived of as rights against absolutism in a state. The concept of human rights is based on an egalitarian doctrine that provides basic moral rights and significance to all. Human rights have now, come to acquire legal status since many of them have been embodied in international declarations, covenants and conventions, the most celebrated of which is the Universal Declaration on Human Rights (1948).

But, the rights theories from Locke to Nozick generating several rights, to be used as an analytical tool have emphasised mainly on the civil and political rights. They are what are called as 'personal rights' by the west. Even the UDHR contains a list of rights that can be traced to this tradition. But there is simultaneously another conception of rights which as fundamental social objectives cannot be abandoned. This gives rise to 'social' bill of rights such as full employment, education, guaranteed income etc. to be achieved by social action. This gives rise to the economic, social and cultural rights. These are rights that take into account not only freedoms from but also rights to certain essential aspects of life. These are rights that require a positive action from the state. However, various commentators like Maurice Cranston believes that only civil and political rights can be properly called as a human rights and that economic, social and cultural rights are simply claims against the state which it is obliged to fulfill. "That the concept of human rights has been muddled, obscured and debilitated in recent years by an attempt to incorporate into it specific rights of a different logical category"²³. He claims that civil and political rights are universal and paramount moral rights, a criteria that remains unfulfilled by economic and social rights and belong only to a certain classes of people. For example, the

²³ Maurice Cranston, What are Human Rights ? (London, 1973), p. 65.

right to periodic holidays with pays refers to employees only. However, many civil and political rights can fail to pass this test as well. For example, the right to vote refers only to those who have attained a certain age. Moreover, certain socio-economic rights like the right to education or to health are such that can be asserted on behalf of all the human beings.

The rights provided by the international covenant on economic, social and cultural rights such as the right to paid holidays may seem to be less important than the right to life. But, even this right is not absurd in any manner. Article 7 (d) of the International Covenant on Economic, Social and Cultural Rights reads, “rest, leisure and reasonable limitations of working hours and periodic holidays with pay, as well as remuneration for public holidays”²⁴. Rest and leisure can be seen as an essential to basic human dignity and thus, significant for protection through human rights. A right to education is equally significant as the freedom of speech and religion or as an essential step to be fulfilled for a meaningful enjoyment of rights such as right to free speech or religion. The right to work, for example, is as important as any other civil and political right since the effects of prolonged and enforced unemployment may be such that has effects as severe as that associated with the denial of freedom of speech or religion. The distinction between the two and the preference for each of the two categories of rights depends upon one’s own preferred theoretical standpoint. It is claimed that in case of their implementation, that the civil and political rights are easier to implement. Since ‘positive rights’ or the economic, social and cultural rights require provision of goods and services in a larger quantity and so it is stated that civil and political rights have priority over the positive rights. However, even at the level of action or practicality, the argument that civil

²⁴ Donnely, n.2, p.91

and political rights are capable of providing immediate protection and the economic, social rights require longer and progressive implementation is some what arbitrary. While, it is quiet clear that the latter set of rights requires a quiet larger spending of a state's Gross Domestic Product (GDP) on items like education, health care etc. it is obvious that even civil and political rights also require some public spending so as to ensure adequate protection. The right to a fair trial for example requires the maintenance of an effective judicial system, provision of publicity financed defenders and so on.

What is to be observed from this exposition is that human rights phenomenon is not then, that which is connected to the protection of individuals from the exercise of state power in their lives, but that which is also directed towards the creation of social conditions by one state in which individuals may develop their fullest action (as defined by the economic, social and cultural rights) that are as significant as the civil and political rights. It entails a fundamental truth that certain material and non-material goods are essential to human survival and well-being thus, to his dignity and thus, are strong candidates for rights theory. A change that has come up since the seventeenth century natural rights which were individualistic in nature to incorporate the rights of the nation/states as collective or group rights in pursuance of some conditions that an individual by himself cannot achieve. Another change that has accompanied this is that the conditions of life, which are to be ensured by the state, may require not only non-interference of others but also active assistance. Thus, some of the rights such as right to education as mentioned earlier can be assured only if the state assumes the task of promoting it. Thus, these rights require positive action, not only from one states but elevating this function of positive action

to a higher international level, for those, who are not able to achieve these societal conditions as a basis of human dignity. In this category of changes has sprung the right to development as a solidarity right that lays down conditions for ensuring human dignity and has a collective as well as individual dimension to it, but one that requires positive action/assistance at all levels of implementation. For a better understanding of right to development as a human right, it is necessary to identify its place in the human rights law. Three theories have been advanced for this task: The Indispensability theory, the Generational theory and the Synthesis theory²⁵. The first, Indispensability theory considers that the right to development is 'indispensable' to exercise other human rights. Under this theory, the right to development is linked to the development level of states, because without development it would not be able to guarantee basic human rights to its citizens. The disadvantage of this theory, however, is that it may allow to be used as a justification for a widespread abuses of rights.

The second, Generational theory views the right to development as a component belonging to a third generation of rights. According to this view, the first generation rights were those that emerged from the natural rights tradition, that is, the civil and political rights. The second generation rights are those, emerging from welfare concept and revolutions in Russia in 1917. The third generation, rights are solidarity rights that require international cooperation and have been attributed largely to the rise of developing countries.

The advantage of this theory is that it follows a chronology that tells us much about the emergence of rights in a historical context. It recognizes

²⁵ Roland Rich, "The Right to Development as an Emerging Human Rights", Virginia Journal of International Law (Virginia) Vol. 23, No. 2 (Winter, 1983), p. 320

the interdependence of the countries, the fact specially that solutions to problems of one nation depends a lot on the action of another which is quite true with regard to peace, environment and development. The criticism levelled against this theory is that it is useful to analyse historical evolution of human rights but the divisions between human rights shows a separatist tendency rather than one as reinforcing their relationship. It gives an implications that the new generation of rights somehow, supersedes the old.

The third theory, The Synthesis Theory, views the right as a synthesis of existing individual and collective human rights. It can be described as a synthesis of other rights in three respects: Firstly, it allows existing formulations of rights to be interpreted in a dynamic way. Secondly, it is not limited to the international bill of human rights only but others principles such as those in NIEO can also be included in it, and that finally the whole is greater than the sum of its parts.

An advantage of this theory is that it takes an integrated approach to development. By including the existing human rights, into the right to development, the synthesis theory targets the individual as the ultimate beneficiary of the development process. Another advantage of this theory is that it combines both the individual development, and economic development as an important element of the human rights agenda.

Despite these advantages, the synthesis theory has been criticized for not reflecting the nature of the right to development clearly. Nevertheless the theory remains essential for an understanding of the right to development and for not adding anything new to human rights concept. But, neither this nor the other two theories clearly define the right to development. Each of these in some way or the other sheds some reflection in explaining the right to development as 'new right' and each of which is necessary for an

understanding of the concerns reflected and explained in the succeeding chapters of the dissertation.

CHAPTER III

ORIGINS AND CONTENTS OF RIGHT TO DEVELOPMENT

From the earlier chapter, we may observe that human rights have differing connotations. But, this gradual evolution of human rights agenda from civil to political rights to economic, social and cultural rights to the rights of solidarity also reveals that though the concerns these rights reflects are of universal relevance, they are a product of a certain historical context from the seventeenth and eighteenth century revolutions against arbitrary rule. The economic, social and cultural rights emerged out of the nineteenth century revolutionary movements in Russia and setting up of ILO (1919). The solidarity rights or the new rights are a product of the rise of the third world countries on the international scenario as a result of the anti-colonialist revolution in 1950's and 1960's.

“The content of human rights goes hand in hand with the state of moral consciousness, or civilization at any given time in history”¹. This implies that there is a need to review the content and form of human rights to make their practice meaningful. It is in this context that the solidarity rights assume significance for the struggle of third world states in the inequitable international order loaded against them. The right to development has become one of the most debated of all these rights . Development is a universal concern and an endeavour to be pursued by every human action. But, it assumes relevance for those in a perpetual state of under-development, a condition that denies them access to basic human rights.

¹ K.P. Saxena, “Human Rights and the Rights to Development”, International Studies (New Delhi), Vol. 28, No. 1, (1991), p. 43

Development thus, becomes a high priority for these states and right to development, most essential for the developing countries in tackling their special problems and as an essential step for harmonious global development. But, underdevelopment may itself be conceived of as a product of colonialism, neo-colonialism, apartheid and racism prevalent in these countries that has led to unequal distribution of resources amongst nations. The right to development then, can be seen as a product of the “right of political communities, states and people subjugated to foreign and colonial domination, and it is articulated in the demands of the New International Economic order (NIEO) and charter of Economic Progress”².

In this context the right to development may be traced in the relationship between the north and south, the haves and the have nots, the developed and the developing nations.

The edifice of the human rights movement in a coherent and recognisable manner was laid down by the United Nations since its inception in 1945, a movement in which the third world countries have a significant share, an evolution accompanied by an equally significant trend of changing powerbase of the international community.

In 1946, the major drafters of the norm were the western delegates assembled at San-Fransisco to draft the UN charter. Chapter IX of the Charter is concerned with international economic, and social cooperation along with the raising of living standards, full employment and social and economic progress before universal respect for and observance of human rights, without however, establishing any hierarchy between these objectives of the world organisation. These objectives certainly had an influence over

² V.P. Nanda, “Development as an Emerging Human Rights under International Laws”, Denver Journal of International Law and Policy (Denver) Vol. 30, no. 2-3 (Winter 1985), p. 176.

the formulation of the universal Declaration on Human Rights since it contains a list of both civil and political and economic, social and cultural rights. “The structure of the international system in the late 1940’s was however, such that the question of priorities or pre-requisites for the enjoyment of these rights was not an issue”³. It was the resultant changing configuration of the UN membership that led to an increasing stress in this norm creating process. There was a change in the ‘senders’ of the norm who were no longer a western dominated (who have mainly upheld civil and political rights) General Assembly. “The object of the norm became less the relationship between the state and the individual subjected to arbitrary abuse or treatment, but rather the increasing system of economic relations which thwart self-reliant economic development”⁴. The human rights movement began to attach a lot of significance to the developmental issues which the structural modifications in the international system had brought about. This is illustrated clearly by the resolutions of the International conference on Human Rights held at Teheran in 1968. In resolution XVII, the conference expressed, that, “the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and that there is a profound interconnection between the realisation of human rights and economic development”⁵. In the proclamation of Teheran , this was expressed in the following two paragraphs : (12). The widening gap between the economies of developed and developing countries impedes the realisation of human rights in the international community” and, (13) Since human rights and fundamental freedoms are indivisible, the full

³ Stephen Marks, “Development in Human Rights : Some Reflection on study on Development, Human Rights and Peace” Bulletin of Peace Proposal (Oslo), Vol. 3(1977), p. 237

⁴ *ibid*, p. 238

⁵ *ibid*, p. 237

realisation of civil and political rights without the enjoyment of the economic, social and cultural rights, is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development”⁶.

The basic idea underlying this trend reflects another trend that is, a shift in the power base of the international community that stimulated a re-thinking of the meaning of international human rights. The documents relating to decolonization, the elimination of apartheid and the establishment of a NIEO further accelerated this process. As Rajni Kothari says, “The debate on human rights is in the throes of an acute controversy. The controversy is not confined merely to the traditional dichotomy between civil and economic, social and cultural rights on the one hand and political rights on the other. The controversy has in fact deepened and closely draws on

- (a) the emerging redefinition of the development problematique...”
- (b) the growing awareness of the centrality of the international dimension of development as found in the debate on the NIEO:.....”⁷.

These new facets of the concept of development have arisen from the “growing conviction that the prevailing patterns of development violate basic values and the capacities of human beings to realise their freedoms as well as the ability of a majority of nations to pursue freely their own paths of self-reliant development and cultural autonomy ... That the main thrust of

⁶ Marks, n.3, pp. 237-38.

⁷ Rajni Kothari, “Human Rights as a North - South Issue”, *Bulletin of Peace Proposals* (Oslo), Vol. 11 (1980), p. 331

human rights movement should be by reference to the living conditions and the prospects for freedom in developing countries is of course, obvious”⁸.

The sudden emergence of the third world on the world scenario requires an understanding of a certain historical background. In the second half of the nineteenth century and the first half of the twentieth century, most of these nations were dependent territories of European powers. These European powers decided the fate of these territories and dictated the type of economic policy and the role they were to play on the scenario of world economic relations. While living under the yoke of the imperial rule, these nations had very little opportunity to enjoy full political and economic freedom. They had no control over their natural resources and at the same time received less for their products. These economic and trade relations were described in a manner that was of advantage to the metropolitan countries. The Industrial Revolution in Europe led to the advancement in each country but at the same time also led to the division of the world into two separate groups on the basis of disparities in income. This led to an increased dependence of some countries on the developed nations not only for the supply of manufactured goods but also to provide markets for their raw materials, thus, forced to remain producers of raw material and blocking the growth of their industries. This led to international division of labour and later the monopolization of technology made the developing countries more dependent on the developed ones. Holistically speaking, underdevelopment in these nations is a product of the structural and historical relations between these nations of the ‘North’ (centre) and the ‘South’ (periphery). The state of human rights in these countries is thus bound up with the structure of underdevelopment that prevails. Thus, with such kind of background,

⁸ Kothari, n.7, p. 331

despite being a group of heterogeneous countries, their 'shared sense of weakness, anxiety an excessive zeal to uphold national sovereignty, and a common desire to attain economic, social and political development"⁹ brought them together. As a result they have come on to become full-fledged members of international society and are actively engaged in modifying the international law according to the changed conditions both at the United Nations and outside it as compared to the earlier situation when they were regarded as mere objects of international law.

Thus, at a time when the concept of self-determination was unknown to colonial powers, the third world countries turned this rudimentary concept into a fundamental human right by 1950(set forth in Article 1 of the two international covenant). The third world interpretation of this principle of self-determination has three major connotations. First, it implies an imposition of a duty on the colonial powers to give independence. Second, it is associated with the elimination of practices of racial segregation. Thirdly, they have stressed upon the economic aspects of self-determination, by virtue of which they may be able to freely pursue their economic, social and cultural development and freely dispose off their natural resources. The first aspect of self-determination proclaimed in 1952 was further enhanced by the 1960 Declaration on Granting of Independence to Colonial Countries and Peoples [adopted on the 14th December 1960 as GARES/514(XV)]. In 1952, the General Assembly extended its interpretation to include the concept of economic self-determination. This element of self-determination was pursued by the recognition of right to permanent sovereignty over natural resources (regarded as a fundamental element of

⁹ Yogesh Tyagi, "Third World Response to Human Rights" Indian Journal of International Law (New Delhi), Vol. 21 (1981), p. 137.

both the right to self determination and right to development) in form of the Declaration on permanent Sovereignty over Natural Resources in 1962, in which it declared that: “The rights of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned”, that international cooperation for the economic development of developing countries shall be such as to further their independent national development and shall be based upon respect for their sovereignty over natural resources”¹⁰ [Article 1 and 6].

The idea of this concept of economic self-determination proposes that colonialism itself is an impediment to development. It continues with the idea that economic independence should follow on from political independence. The concept of self-determination thus, laid down the essential foundations of NIEO though the immediate reasons for its origin may have been the oil embargo of 1973 “The political pressure of the third world acquired a status of structural character when the abolition of economic inequality was placed in the context of the search for a NIEO”¹¹. In the 1970’s the developing countries raised attention towards the inequalities embedded in the world economy that have been a product of the colonial era and industrialization. The problems for establishing a NIEO arose as a result of the urgent need for developing countries to resolve their developmental problems in a way that would achieve and reaffirm their economic self-reliance and consolidate their political independence. The present economic order as mentioned earlier began to imposed at a time

¹⁰ Satish Chandra, International Documents on Human Rights (New Delhi, 1990), p. 64.

¹¹ Karel De Vey Mestdagh, “The Right to Development : From Evolving Principle to Eagle Rights”, In International Commission of Jurists, ed., Development, Human Rights and the Rule of Law (Oxford, 1981), p. 163.

when the developing countries were still dependent territories and unable to take part in its establishment. It was therefore, inevitably inequitable and contrary to their interests. The significance of a new order lies in the impact and mal functioning that an unequal international economic order may have an impact that can be assessed on two levels. The first level may be represented by the statistics showing the dimensions of absolute poverty—defined by the world bank as, “a condition of life so characterised by malnutrition, disease, illiteracy as to be beneath any reasonable definition of human decency”¹². According to the statistics, the number of people in absolute poverty in developing countries is estimated at around 800 million. In the low-income countries people on average live 24 years less than they do in the industrialized countries. Some 600 million adults are illiterate and one-third of the primary school-age children not going to school¹³. In terms of economic and social rights these figures alone represent massive and persistent violations. The second level may be assessed at the pursuit of specific policies and structures which impinge directly upon human rights. One of such aspects is militarization. Reduction in military expenditure makes funds available for financing development and meet basic social welfare needs. The diversion of resources towards arms race inevitably effects the realisation of rights that could improve living standards. Therefore, from a human rights point of view it is of fundamental importance that a change is brought about in the existing economic system, because the relationship between NIEO and suppression of the unjust system of international economic relations is to create economic and political conditions that enables all to enjoy their human rights and

¹² Philip Alston, “Preventions Versus Cure As a Human Rights Strategy”, n.11, p. 88.

¹³ *ibid*, p. 88

fundamental freedoms. In the conditions of absolute poverty it becomes difficult to attain even the minimum needs of life enshrined in form of fundamental rights in the Universal Declaration on Human Rights and especially Article 25 which states that everyone has a right to a standard of living adequate for the health of himself and his family. As Mr Van Boven stated in the seminar held at Geneva in 1980 that "It is a challenge of utmost importance, for unless we can effectively bridge the gap between the realms of human rights and economics we risk the pursuit, on the one hand, of an international economic order which neglects the fundamental human development objective of all our endeavours, and on the other hand, of a shallow approach to human rights which neglects the deeper, structural causes of injustice, of which gross violation of human rights are often only the symptoms..."¹⁴. With NIEO the previous methods of looking at civil and political rights lost relevant. The political demands for a NIEO entail demands for a just and equitable world order. NIEO implies a set of change put forth in the form of "Declaration on Establishment of a New International Economic Order". In the light of the relationship between development and human right it is pertinent to found out the extent to which these documents reflect a commitment to human Rights. The Declaration states that "the remaining vestiges of alien and colonial domination, foreign occupation, racial discrimination, apartheid and neo-colonialism all its form continue to be among the greatest obstacles to the full emancipation and progress of developing countries and all the peoples involved"¹⁵. On the relationship of inter dependence it says that "current events have brought into sharp focus the realization that the interests of the developed countries

¹⁴ UN DOC E/CN.4/Sub.2/1983/24, CHR, Subcommittee on Prevention of Discrimination and Protection of Minorities, Thirty-sixth session, p. 6

¹⁵ International Legal Materials, (Washington, D.C.), Vol. 13, Part 1, p. 716.

and those of the developing countries can no longer be isolated from each other, that there is a close interrelationship between the prosperity of the developed countries and the growth and development of developing countries, and that the prosperity of the international community as whole depends upon the prosperity of its constituent parts".¹⁶ As a result, it stipulates twenty principles such as : restitution of and full compensation for exploitation, control by states over natural resources, regulation of transnational corporations and so on. While the first three paragraphs of the declaration do make a reference to certain concerns like colonialism, neo-colonialism, self-determination of people and permanent sovereignty over natural resources, the term human rights does not actually appear in the Declaration.

Another related document, the Charter of Economic Rights and Duties States was adopted in the twenty-ninth session by a vote of 120 to 6 with 10 abstentions. On 12th December, 1974, a vote taken by roll-call as resolution 3281 (as contained in the second committee reports A/1946, para 25) in 2315th plenary meeting.

IN FAVOUR: Dahomey, Democratic Yemen, Dominion Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Finland, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Gautemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Jordan, Kenya, Khmer Republic, Kuwait, Laos, Lebanon, Lesotho, Liberia, Libyan Arab Republic, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Nepal, NewZealand, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines,

¹⁶ International Legal Materials, n.15, pp. 716-17

Poland, Portugal, Qatar, Romania, Sierra-Leone, Singapore, Somalia, Srilanka, Sudan, Swaziland Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad-Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist, United Republic of Cameroon, United Republic of Tanzania, Upper Volta Uruguay, Venezuela, Yemen, Yugoslavia, Zaire, Zambia, Afghanistan, Albania, Algeria, Argentina, Australia, Bahamas, Bahrain, Bangladesh, Barbados, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi Byelorussia, Soviet Socialist Republic, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czechkoslovakia.

AGAINST: Denmark, Germany, Luxembourg, United Kingdom of Great Britain and Northern Ireland, United States of America, Belgium.

ABSTAINING: France, Ireland, Israel, Italy, Japan, Netherlands, Norway, Spain, Austria, Canada¹⁷.

The charter is the relevant of all and includes a specific reference to the concept of human rights. When the charter was first proposed in the 1972 United Nations conference on Trade and development (UNCTAD) in Santiago, the representative of the G77 (a consortium of developing countries actually containing more than around one hundred and twenty members) said that “it should be a counterpart in the economic field to the universal Declaration and the International covenants on Human Rights”¹⁸. Chapter I of the charter on Fundamental of International Economic Relations contains fifteen principles by which economic as well as political and other relations among states are to be governed. This includes principle (K) which

¹⁷ GAOR, Plen. Mtgs 2315 and Corr. 1, Session Twenty-nine, Vol. II, p. 1372.

¹⁸ Alston, n.12, p. 91.

speaks of “respect for human rights and fundamental freedoms”¹⁹. Other principles of particular reference include equal rights and self-determination of people (Chapter 1), and promotion of international social justice that shall govern economic, political and other relations among states. In terms of an explicit recognition of the essential links between human rights and NIEO is article 7. It states that : “Every state has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each state has the right and the responsibility to choose its means and goals of development, participate in the process and benefit of development. All states have the duty, individually and collectively, to cooperate in eliminating obstacles that hinder such mobilization and use”²⁰. The charter under Article 7 acknowledges the fact that equitable treatment as demanded by states under NIEO have to be related to domestic equity as well. Article 7 also avoids using specific human rights term but by referring to participation in the process and benefit of development it focusses on the question of human rights in a much balanced way. But, the two documents attracted a lot of opposition from the developed states, while the NIEO declaration was adopted without a vote, many states had several reservations which destroyed the sort of unity that had been implied in the voting. The French representative felt that there existed a need to achieve “a more equitable international economic order”²¹. The west German representative went further in stating that the “declaration of principles..., we are convinced, will pave the way for new international economic order”²². The entire opposition to the resolution is summed up by the statement of UK representative who

¹⁹ GAOR, Session Twenty-nine, Annexes, 1974, p. 28.

²⁰ Ibid, p.28

²¹ International Legal Materials, n. 15, p. 762

²² ibid, p. 749.

stated that : the main problem we have to face here is a difference of views on what the concept of economic interdependence means in practice”²³. The charter was regarded by the developed states as “programmatically, politically and didactically, lacking evidence at any attempt on part of the developing states to compromise and thus leaving the impression of a ‘largely hortatory’ document”²⁴. Thus in both the cases the developed states tried to stall the progress in the field of international law in the economic arena. These texts do identify from a human rights point of view that structural changes are required before the developing countries can stand on an equal footing with the developed ones. From the outset however, it is clear that an unjust international economic order cannot be utilised to justify abuses or violations of human rights. It is that such an order was created in the conditions of non-participation by the developing countries and thus, needs to be redressed. What NIEO has done is to present shared conception of a number of countries of the international community with regard to the means of achieving equitable global development. Right to development then, represents the means to stress upon the links between human rights promotion and establishment of NIEO. With the opposition that the NIEO and related documents attracted, the move to raise the moral imperatives entered directly into human rights framework. A headway in this regard was soon made when the General Assembly adopted resolution 32/130 on 16th December, 1977 and after a long time of attention to civil and political rights claimed that the economic social cultural rights are interdependent and indivisible. The draft resolution was sponsored by Angola, Argentina, Bangladesh, Benin, Bulgaria, Burundi, Comoros, Cuba, Egypt, Ethiopia,

²³ International Legal Materials, n.15, p. 763.

²⁴ Pierre Makhlouf, “The Right to Development and The New International Economic Order”, In A.P. Vijapur, ed., Essay on International Human Rights (New Delhi, 1991), pp. 217-18

Finland, Hungary, India, Iraq, Jordan, Kenya, Libyan Arab Jamahiriya, Madagascar, Mali, New Zealand, Pakistan, Papua New Guinea, Peru, Philippines, Sweden, Syrian Arab Republic, United Republic of Tanzania, Vietnam, Yemen, Yugoslavia and Zambia. It was adopted by a vote of 123 to none with 15 abstentions. The abstentions included in addition to the nine members of the European community, Chad, Israel, Ivory Coast, Paraguay, Spain and United State of America.²⁵ It states that human rights must be examined globally, taking into account both the overall context of various societies in which they present themselves as well as the need to promote the full dignity of human beings, development and well being of the society [Article 1(d)]. It also stated that “all human rights were indivisible but priority should be given to the rights of peoples affected by apartheid, colonialism, foreign domination, and by refusal to recognize their right to self-determination and full sovereignty over their natural resources” and that “realisation of NIEO is an essential element for effective promotion of human rights”²⁶. By this time, there was a growing awareness that it is as significant to identify and seek to remove structural obstacles that lie at the root of injustices as it is to deal with its symptoms as well that emerge in form of its violations. “The harvest was miniscule until 1977 when the Commission on Human Rights initiated its deliberation on the Right to Development and General Assembly extended its NIEO work into the field of human rights by adopting resolution 32/130 which has since then served as the spring board for a variety of initiatives designed to change very substantially, the nature and direction of human rights”²⁷. The single most

²⁵ M. Moskowitz, “Implementing Human Rights”, In B.G. Ramcharan, ed., Thirty Years After the Universal Declaration (The Hague 1979), p. 119.

²⁶ *ibid*, p.120

²⁷ Philip Alson, “Redressing the Curative imbalance in the United Nation’s Approach to Human Rights : The Past and the Future Role of Lawyers, n. 11, p.

important element in this structural approach to human rights so far then is the right to development which was adopted by the General Assembly in form of a resolution 34/46 (1979) and which emphasizes that “right to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within a nations” (Art. 8)²⁸. Recorded vote on Resolution 34/46 (adopted by a vote of 136-1-7).

IN FAVOUR: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussia, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Finland, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People’s Democratic Republic, Lebanon, Lesotho, Libya, Madagascar, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Sweden, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, USSR, United Arab Emirates, United Republic of

²⁸ Alston, n. 12, p. 99.

Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Vietnam, Yemen, Yugoslavia, Zaire, Zambia.

AGAINST: United States.

ABSTAINING: Belgium, France, Federal Republic of Germany, Israel, Luxembourg, Malawi, United Kingdom.

ABSENT: Albania, Dominica, Liberia, Paraguay, Saint Lucia, Seychelles, Solomon Island²⁹.

While the right emerges a result of a long struggle of the third world states, the first attempt to define the right to development theoretically was however, made by Keba M'Baye who deduced it as a human right in 1972 in his Inaugural Lecture to the International Institute for Human Rights. Some years later the concept became more prominent when jurist Karel Vasak classified it in a new category of 'third generation' rights. The United Nations activity in this context began in 1977. In this year the Commission on Human Rights under the Chairmanship of M'Baye adopted Resolution 5 (paragraph 4) recommending to the ECOSOC that, in cooperation with the UNESCO and other specialised agencies, to invite the Secretary General to investigate "the international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirement of a new International Economic order and the fundamental human needs"³⁰.

²⁹ GAOR, plen. mtg. 76, Session 34, Vol. II, p. 1387-88.

³⁰ Jack Donnelley, "In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development", California Western International Law Journal, (California,) Vol. 15, No. 3 (Summer 1985), p. 474.

Among other positions taken firmly with regard to this right; is the United Nations Educational Scientific Cultural Organisation [UNESCO] Declaration on Race and Racial Prejudice of November 27, 1978, which refers in article 3, to “the right to full development (which) implies equal access to the means of personal and collective advancement and fulfillment in a climate of respect for the values of civilizations and cultures, both national and world wide”³¹. But, it was in 1979 that the right was exposed to international prominence. In this year, a report on the right to development prepared by UN secretary General was issued. This was followed by the General Assembly recognition of the right to development in resolution 34/46 adopted on 23rd November, 1979.

CONTENT OF THE RIGHT TO DEVELOPMENT: After the analysis of origins of the right to development, it becomes pertinent to discover its content and substance. As far as its definition is concerned, no precise formulation or definition of it exists. The closest approximation is the very general formulation adopted by the commission on Human Rights and general Assembly as noted above.

A comprehensive study of the right that exists is the 1979 report by the Secretary General³². The report begins by stating certain elements that are part of the concept: the central purpose of development is realization of potentialities of the human person in harmony with the community; human person is the subject and not the object of the development; both material and non-material needs must be satisfied; respect for human rights is fundamental, a degree of collective and individual self-reliance must be

³¹ Stephen Marks, “Emerging Human Rights: A New Generation for the 1980s?”, Rutgers Law Review (New Jersey), Vol. 33, No. 2, (Winter, 1981), p. 445

³² UN DOC E/CN4/1344/1979 ,CHR, Session Thirty-four

achieved. The report elaborates then upon the ethical and legal foundations of the right to development. The former ranging from a general aspect of justice and fairness through solidarity, and interdependence. As for the legal basis, the report concludes that it is based upon a body of principles enshrined in the charter of the UN and the International Bill of Human Rights reinforced by a range of conventions and declarations. From the foundations of the right, the report progresses to enlist the subject and duty-bearers of the right. The former being the states, peoples, minorities and individuals and the latter encompassing the international community, international organisations, states (developed) and other entities like transnational corporations etc. The remainder of the report is devoted to the relationship that exists between right to development, peace, disarmament, self-determination etc.

A methodological analysis of the content and substance of right to development requires an analysis of the rights and obligations. This needs that the bearers of the rights and obligations be identified. UN Resolution 34/46 has emphasized that equal opportunities for development is as much as prerogative of states as of individuals. From this it is clear that the right to development is a human right of the individuals as well as the states. Infact, the coupling of this individual right with that of the right of states is its most innovatory element. This position is even reflected in a number of sources that have contributed to the building up of the right to development such as the charter of Economic Rights and Duties of states which is directed towards the states, the Declaration on the Establishment of a New International Economic order.

Infact, the enjoyment of the right to development necessarily involves balancing between the interest of the collective on one hand, and those of the

individual on the other³³. Any determination of the active subjects of the right is development depends on how the right is viewed. If it is viewed as a collective right in international law, its subjects are all states, but especially developing countries because of the external constraints they have been facing in form of colonialism, foreign occupation, or apartheid and if it is viewed as an individual right, its active subjects are all individuals. The changing meaning of development implies that all developmental activities must aim at the human person for his spiritual, moral and material advancement. This means that the civil and political, economic, social and cultural rights are linked to each other. Thus, as far as the individual's right to development is concerned it implies realization of the entire range of rights contained in the International Bill of Human Rights. Van Boven, Former, Head of the Human Rights Divisions (UN) states that, "the right to development is a holistic concept which seeks to create a synthesis of a whole range of existing human rights which are informed and given an extra dimension by the emergence of a growing international consensus on a variety of development objectives"³⁴. The substance of the right in its individual dimension can be regarded as a synthesis, or rather as an aggregate of existing rights. This implies that certain basic rights of individuals such as right to life, adequate food, housing etc. along with freedom of thought, conscience and religion must be guaranteed for a dignified existence. In order to guarantee the right of individual to development it must be the state's responsibility to guarantee him his basic rights.

³³ UN DOC E/CN4/1344/1979 , n. 32, para 85, p. 46

³⁴ L.J. Macfarlane, The Theory and Practice of Human Rights (London, 1985), p. 138

The Charter of Economic Rights and Duties of States for example, in article 7, provides that each state must promote the economic, social and cultural development of its people. To this end each state has the right and responsibility to choose the means and goals suitable for national development.

Another specific statement on the responsibilities of states is to be found in the Declaration Social Progress and Development adopted in 1969. Article 8 refers to the responsibility of governments in planning social development measures to ensure the progress and well-being of their peoples³⁵. This does not mean that the substance of right to development is established. While, the responsibility for development may lie with the developing countries, it is emphasized by these documents that it is not a matter only of 'sound and effective national' but also of 'sound and effective international policies of economic and social development'. For example, the Declaration on social progress states at various places that social progress and development are common concerns of international community supplemented by national action. The right thus, has an inter-state aspect too. One of the essential features of international law on human rights is that it not only imposes an obligation to implement these rights within their territories but also makes these states co-responsible for their implementation in other countries. This function of co-responsibility involves not only the function of supervision and correction in a condition of lack of implementation of international standards because it lacks the necessary resources, or where the government does not possess the required means and power to mobilize in sufficient measure the resources available in the country to achieve that end, the other states then have the duty to help it

³⁵ Chandra, n. 10, p. 465.

to reach that standard with the aid of more resources. It is this duty of co-responsibility that constitutes the basis of this inter-state component of the right to development, also referred to as duty of solidarity (to cooperation) speaking at the thirty-third session of the CHR Keba M'Baye (1391st meeting)³⁶ said that human rights have both a national and an international dimension. Provision of free and compulsory education in an African country, according to 'Baye would require spending one and a half times the national budget, unthinkable in the present international context.

For that reason, the CHR should place emphasis first and foremost on the obligation of member states and the international community to act jointly in the conviction that everyone has the right to security and dignity, and therefore, to living conditions which would enable him to be free, which can be achieved by recognising right to development as a human right, a right that was justified not only by the economic inter-dependence which made the economic progress of developing countries an important factor in the growth of industrialized countries but also by moral responsibilities of the economic powers by the principle of universal solidarity to enable all individuals to live a dignified life.

The argument that colonial powers must assist their counter-parts that is, the developing countries is explained duly by the historical and economic privileges they have enjoyed.

Therefore, considered as a collective right the duty holders of the right become the developed nations. and the international community. No nation can dissociate its external and internal policies. Any development policy is based on an increasing responsibility for morality in relations between

³⁶ UN DOC E/CN4/SR.1391, CHR, Thirty-third Session, p. 94.

people reinforced by the need to being about a harmonious global development to ultimately benefit the individual. The Pearson Report on Development puts the point clearly:

“If the rich countries ... concentrate on the elimination of poverty and backwardness at home and ignore them abroad, what would happen to the principle by which they seek to live? Could the moral and social foundations of their own societies remain firm and steady if they washed their hands of the plight of others?”³⁷

Thus, development cannot be promoted fully if it is not substantiated by efforts of international cooperation. An international order that debars the vast majority an access to the basic rights cannot be defended. Therefore, the achievement of right to development depends upon an affirmative action from all.

Strong criticisms of the collective aspect of the Right to Development have come from Donnelly³⁸. According to him, even the economic, social and cultural rights which regulate the pattern of distribution of certain collective resources and opportunities by ensuring that all individuals share a minimum of goods, services and opportunities are individual rights. Infact, this is where the collective aspect in form of right of states comes in. The distribution of these goods is linked to the inequitable division of resources at the international level. Due to non-availability of resources the developing countries are not able to implement the socio-economic rights of people such as to education, to health etc. which depends on their implementation by the state by spending large amount of resources. Thus, an effort at the national

³⁷ UN DOC E/CN4/1334/1979, n.32, p. 24.

³⁸ Donnelly, n. 30, pp. 496-97.

level to make available to all individuals these rights is inextricably linked to the efforts of cooperation at the international level of cooperation. It is also claimed that no right can be simultaneously collective as well as an individual right. But, it has become necessary that, "for an adequate protection of the individual, of the human person, it is necessary to declare and proclaim the essential rights which recognise as subjects those collective entities which the individuals are able to utilize in order to fully satisfy their personal lives"³⁹. This analysis which is applicable to the right to self-determination is applicable to right to development as well. Thus, satisfaction of collective right is necessary for the materialization of certain individual rights. Just as self-determination is necessary for the individual to enjoy their civil and political rights, so is right to development essential for realization of their social and economic rights.

The majority of the third world nations view the making of the international system, its decisions making as not of their own making. They believe that the international system that operates through international law and major international organisations that impart decisions which favour a sort of a status quo and therefore is to the disadvantage of developing countries.

The right to self determination marked a significant step towards changing this status-quo relevant to their needs, necessary to realize civil and political rights of the individuals as a collectivity. The right to development in its collective dimensions is then necessary to satisfaction of social and economic rights of the individual. It therefore, responds to the major priority of the developing countries-economic development. It has

³⁹ H.G. Espiell, "The Right to Development as an Human Right", Texas International Law Journal (Texas), Vol. 16, no 2., (Spring, 1981), p. 196.

been described in fact as the “right to economic self-determination” (which laid down the essential foundations of NIEO demands). It may be regarded thereby, as an essential corollary to the struggle of the developing countries to direct attention of the world community towards their demands for restructuring of the world order, because since the 1960’s onwards when they were in a strong numerical position to do so. Thus, expressed in self-determination through primacy to economic, social and cultural rights to NIEO and then, finally entrenching their priorities. in the right to development. Criticisms however, also are cashed out at this position that links NIEO and right to development. Jack Donnelly again expresses his reservations when he says, “the structure of international economic relations, presents serious impediments to the realization of human rights, especially economic, social, cultural rights, it is a gross one-sided distortion to argue that NIEO represents the ‘blueprint of the right to development’⁴⁰. According to him there lies a tendency to reduce right to development as a mere tool in struggle for a NIEO. Commentators like Vasak on the other hand, regard this right as a, “consolidated right which while incorporating a number of recognised human rights enhances them to impart effective impetus to the institution of a new international economic order”⁴¹. In fact, what right to development does is that it extends the moral claims of the developing countries for bringing about the introduction of a NIEO by linking it to the realm of human rights and then emphasizing on the need for a structural approach to human rights. An UNCTAD Report points out that “the right to development cannot be fully realised without the emergence of a new power structure based on the right and responsibility of

⁴⁰ Donnelly, n. 30, p. 504.

⁴¹ UN DOC/E/CN. 4/Sub.2/1983/24, n. 14, para 192, p. 49

each state and people to freely determine their own development objectives; fundamental reforms of an economic order which generates permanent economic disequilibrium and resource wastage; and recognition of the obligation of all states to cooperate for the common good in a spirit of global solidarity”⁴². The Declaration on the Right to Development (1986) (GARES41/128) in its articles 6(1) and 6(2) provides for protection of human rights in the process of both development and the introduction of the NIEO. This prevents the use of the said right as an excuse by states as a pre-requisite for implementation of other human rights.

It thus represents the essential link between human rights and economic development. It represents the demand and aspirations of the developing countries. But, since the right has also the individual dimensions the rights of the first and the second generation get linked with the economic development of developing countries. It links economic development of nations and development of individuals as two elements of the same human right. The basic underlying idea is that economic development of the under-developed countries is essential for the social well-being and political stability without which they cannot ensure effective operation of civil political, economic, social and cultural rights. It enhances the effectiveness of traditional human rights. Besides, it represents an attempt as a “corrective to the direction of development” and is “concerned with the quality of development”⁴³. By making individual development as one part of the right, it counters the notion that development is solely concerned with economic growth rates and rapid industrialization. Rather, it aims at an improvement in all its aspects social, economic as well as political. What it does is that it

⁴² UN DOC/E//CN.4/1334/1979, n. 32, para 158, p. 86

⁴³ Roland Rich, “The Right To Development As An Emerging Human Right”, Virginia Journal of International Law (Virginia), Vol. 23, no.2(winter 1983), p. 326.

recognises the place of the state as sovereign in the process of development but at the same time recognizes the individual as ultimate beneficiary of development.

Infact, the gap between the enjoyment of human rights and the widespread violations of these rights represents the basic challenge to the human rights agenda. To close this gap, the world community has to eliminate the root cause of these violations. In that respect, the efforts of the international community must focus on right to development, its implementation, definition and ensuring greater respect for economic, social and cultural rights and improving at the fundamental level, the life of the individual. Therefore, the entire crux of the matter lies in the fact that underdevelopment is the acutest of human rights problem and lack of resources deny those basic conditions to the state and individual in which a life of dignity can be secured. Hence, for these reasons right to development has come to be recognized as an inalienable human right, especially for the developing world with a typical historical background, their future depends heavily on a better understanding of this right for on this right depend so many other human rights. Thus, in this context the right delineates a duty of solidarity based on an historical and moral imperative, a duty that cannot be neglected by the developed states and the international community especially when the human person is at the centre of the function of development, leading to establishment of equality and justice as the guiding principles of international action.

CHAPTER IV

HISTORICAL FOUNDATIONS OF THE RIGHT TO DEVELOPMENT

The duty of solidarity which is the basis of right to development not only has moral and ethical claims but, a moral duty that can be located as a legal obligation delineated in various authoritative expressions of international instruments adopted by UN and other international organisations that establish the line between development and human rights. To begin with it can be located in the charter of the United Nations itself. The charter of the UN itself places human rights in a pivotal position to assist in the creation of a peaceful international order and economic development. Article 1 [3] provides that one of the purposes of the organisation is to “achieve international cooperation in solving problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms”¹.

This purpose is further reaffirmed by Article 55 and 56 of the UN Charter. Article 55 states that, “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 people, the UN shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health and related problems and international cultural and educational cooperation;

¹ Satish Chandra, International Documents on Human Rights (New Delhi, 1990), edn. I, p. 3.

- (c) universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”².

Under Article 56, “All members pledge themselves to take joint & separate action in cooperation with the organisation for the achievement of the purposes set forth in article 55. These provisions reflect that, “it is established unequivocally in the charter of the UN as a consequence of the renunciation of the normal attributes of conventional sovereignty and as an extension of the duty of cooperation”³.

Along with the charter provisions which are of fundamental importance, the International Bill of Human Rights comprising of the Universal Declaration on Human Rights and the two International covenants strengthen the edifice for the existence of a right to development.

Article 22 of the Universal Declaration on Human Rights adopted on 10th December, 1948 states that, “Everyone as a member of the society, has the right to social security and is entitled to the realization, national effort and international cooperation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”⁴.

This article enfolds the two major aspects that are integral to the right to development - national and international means for achievement of economic, social and cultural rights, that are essential for the development of the individual. This theme that encompasses the concept of international cooperation is further projected in Article 28 which states that,

² Chandra, n. 1, p. 3.

³ *ibid*, p. 8.

⁴ *ibid*, p. 8.

“everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration can be fully realized”⁵. This provision specifies that full realization of human rights requires an appropriate social and international order: A social and international order is something which changes, and here we have the idea of development inclusive, right from the beginning of the international discussion on human rights. Commentators like Donnelly⁶ rejects the relevance of Article 28 on the grounds that the absence of an equivalent article is missing in continuity in the International Covenants on Human Rights that were created to provide force of law to Declaration provisions. But, Article 28 has a wide explanatory scope. It establishes the fact that respect of human rights does not imply only to the relationship between states and individuals but gives rise to obligations that apply in some way to all societal relations whether the local, national or international level.

Further reference to ‘development’ in the UDHR may be found in Article 26 [2] that is related to the objective of education and article 29 [1] which says that “everyone has duties to the community in which alone the free and full development of his personality is possible”⁷.

The provisions contained in the two International Covenants on Human Rights adopted in 1966 and which entered into force in 1976 are also significant in this respect. Of utmost importance is Article 1(1) of both the covenants. It proclaims that, “all peoples have the right to self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development”⁸.

⁵ Chandra, n. 1, p. 10.

⁶ Jack Donnelly, “In Search of the Unicorn : The Jurisprudence and Politics of the Right to Development”, California Western International Law Journal (California), Vol. 15, no.3 (Summer 1985), p. 486.

⁷ Chandra, n. 1, pp. 9-10.

⁸ Chandra, n. 1, p. 12, 25.

Article 2[1] of the International covenant on economic, social and cultural rights imposes upon the states parties a legal obligation to : “take steps, individually and through international assistance and cooperation especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present covenant by all appropriate means, including particularly the adoption of legislative measures”⁹.

Article 11 of the same covenant recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to continuous improvement of living conditions”¹⁰. It alongside adds that the parties to the covenant shall take suitable measures to ensure the realization of this right which again recognises the concept of international cooperation.

The right to life enlisted as Article 3 in the UDHR and article 6 in the International Consent on Civil and Political Rights (ICCPR), has also been recognised as a basis for the right to development. The right to life, or to live as a human being is a core human right. But, to sustain this core aspect, the existence of such conditions, which are essential for the development of the potential of the individuals, is also necessary to be created. In the thirty-third session of the Commission on Human Rights (CHR) on the “question of realization of economic, social and cultural rights contained in the UDHR and duty of special problems relating to human rights in developing countries”, it was put across by the Iranian representative (Miss Shahkar) that “the right to decent life, however, as distinct from the right merely to

⁹ *ibid*, p. 12.

¹⁰ *ibid*, p. 15.

exist, necessarily involved Economic, Social, Cultural rights which are essential for the physical and intellectual well being of the individual”¹¹.

In addition to the core of the human rights instruments, various others declarations adopted by the General Assembly hold relevance. A declaration of a General Assembly is not binding as that of a treaty but has become a practice that is used to mark rare and solemn occasion for example the Universal Declaration on Human Rights, and has considerable moral and political force, relating to matters of lasting importance and where compliance is expected, and some of which are relevant for this study. These are instruments that reflect concerns embodied partially in them, concern of fully significant as a basis and means to achieve development.

In the Declaration on Granting to Independence to Colonial Countries and Peoples the General Assembly declares that it is, *convinced* that the continued existence of colonialism prevents the development of international economic cooperation, impedes the social cultural and economic development of dependent peoples and militates against the UN ideals of universal peace”¹² [para 7, preamble GA Res 1514 (XV) adopted on 14th December, 1960].

The Declaration on the Rights of Child provides that “the child shall enjoy special protection, and shall be given opportunities, facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity”¹³. [Principle 2, GA RES 1386 (XIV) adopted on 20th November, 1959]. The preamble to the Declaration on

¹¹ UN DOC E/CN.4/SR.1396,CHR, Session Thirty three, 1977, para 18, p. 8.

¹² Chandra, n. 1, p. 61.

¹³ *ibid*, p. 445.

elimination of Discrimination against women declares that, “discrimination amongst women ... is an obstacle to the full development of the potentialities of women in the service of their country and humanity”¹⁴ [GA Res 2263 (XXII) on 7th November, 1967] [Preambular paragraph 5].

The Universal Declaration on the Eradication of Hunger and Malnutrition, adopted by the World Food Conference convened under GA Res 3180 (XXVIII) of 17th December, 1973 and later endorsed by General Assembly as General Assembly Resolution 3348 (XXIX) proclaims that, “every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully ...[and] accordingly the eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help”¹⁵ (article 1). Further in Article 8, it pronounces the role of the developed nations in matters of food production for developing nations. It says that “All countries, and primarily the highly industrialized countries, should promote the advancement of food production technology ... for the benefit of developing countries”¹⁶.

The closest of all that comes to establishing a link between “human rights’ and “development”, is the Declaration on Social Progress and Development” [proclaimed by General Assembly Resolution 2542 (XXIV) of 11th December, 1969]. It states that “social progress and development shall be founded on respect for dignity and value of the human person and shall ensure promotion of human rights and social justice, which requires:

- (a) The immediate and final elimination of all forms of inequality, exploitation of peoples and individuals, colonialism and racism,

¹⁴ Chandra, n.1, p. 131.

¹⁵ *ibid*, p. 479.

including nazism and apartheid, and all other policies and ideologies opposed to the purposes and principles of UN;

- (b) The recognition and effective implementation of civil and political rights as well as of economic, social and cultural rights without any discrimination” [Article 2]¹⁷.

The duty of cooperation is further outlined in the Declaration on the Establishment of a New International Economic order [NIEO] and the Charter of Economic Rights and Duties of States-documents that clearly pronounce the need for development cooperation. Paragraph 3 of the declaration proclaims that “international cooperation for development is the shared goal and duty of all countries”¹⁸. While, a lot of disagreement prevailed over Charter provisions, it more specifically states the objective of the international community. Paragraph 9 of the Charter proclaims that, “All states have the responsibility to cooperate for the promotion of economic and social progress throughout the world, especially that of developing countries”¹⁹. In article 17 this is further enhanced by stating that, ...“to cooperate with the efforts of the developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for sovereign equality of states free of conditions derogating from their sovereignty”²⁰. Article 31 of the charter further stresses upon the fact that, “all states have the duty to contribute to the balanced expansion of the world economy, taking into account the close inter-relationship between the well-being of the developed

¹⁶ *ibid*, p. 480.

¹⁷ Chandra, n. 1, p. 463.

¹⁸ UN DOC E/CN.4/1334/1979, CHR, Session 35, para 73, p. 39.

¹⁹ *ibid*, para 73, p. 39.

²⁰ *ibid*, para 73, p. 39.

countries and the growth and development of developing countries”²¹. These documents clearly reflect the developmental needs of the developing countries and is related to the concept of redistribution of power and decision-making. While these are recent attempts to delineate the duty to cooperate, being obligatory towards achievement of certain major aspects like peace and development as a basis of well-being of all, the concept can be traced way back to the 1940’s. In 1941, the Atlantic Charter hoped that in the post world war period, “All men in all the lands may live out their lives in freedom from fear and want”²².

The Declaration of Philadelphia adopted in 1944 and incorporated into the constitution of International Labour Organisation [ILO] expressed that, “all human beings irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual freedom and dignity, in conditions of economic security and equal opportunity”. [principle II a of ILO constitution]. It further states that, “all national and international policies, in particular those of economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective”²³.

At the same time the constitution of the United Nations Industrial Development Organisation (UNIDO) describes “international cooperation for development as the shared goal and common obligation of all countries”²⁴.

Besides, these a number of regional organisations also imply a reference and support to a right to development.

²¹ UN DOC E/CN.4/1334/1979, n. 18, CHR, Session 35, para73, p. 40.

²² Roland Rich, “The Right to Development as an Emerging Human Right “,Virginia Journal of International Law (Virginia), Vol. 23, no. 2 (winter 1983), p. 290.

²³ UN DOC E /CN.4/1996/24, CHR, Session Fifty two, para 52, p. 7.

The Charter of the Organisation of American states, adopted on 30th April, 1948, notes in the first preambular paragraph that, “the historic mission of America is to offer man a land of liberty, and a favourable environment for the development of his personality and the realization of his just aspirations”. Pursuant to this objective one of the aims of Organisation of American states has been described as “promotion, by cooperative action, their economic, social, cultural development”. In the Chapter on “Fundamental Rights and Duties of states”, the Charter provides that each state has the right to develop its cultural, political and economic life freely and naturally”²⁵.

The European social charter adopted by the council of Europe in 1961 also contains provisions which are of relevance to the right to development. Pursuant to article 14 which relates to the right to benefit from social welfare services, the contracting parties undertake, inter alia, to promote or provide services which by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community...” [Article 14(1)]²⁶

Finally, the African Charter on Human and People’ Rights (Known also as the Banjul Charter) explicitly recognises the right to development as a human right:

- (a) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of common heritage of mankind;

²⁴ Rich, n. 22, p. 299.

²⁵ UN DOC E/CN.4/1334/1979, n. 18, para 76, p.18.

²⁶ *ibid*, para 77, p. 42.

- (b) States shall have the duty, individually or collectively, to ensure the existence of a right to development²⁷.

The analysis of these norms reflects that there is a substantial body of principles based on the charter of the UN, the International Bill of Human Rights, reinforced by other declarations and conventions that demonstrate the existence of a right to development.

These expression and statements support the right to development as an evolving principle of international law. The discussions on the feasibility of a right to development however, also involves a question of creation of a new instrument on the right to development as a human right. The fact that the substantial body of existing human rights instruments demonstrate the existence of a human right to development in one way or the other led Keba M'Baye, one of the first to speak of a right to development, to state that there is no need to create a new instrument since it is already contained in international law.

Some of these instruments like the Universal Declaration and covenants do refer to development. But, these are references that are implicit in nature. Therefore, in order to create an awareness on a human right to development and the fact that the states are bound by the obligations which underlie the right to development, it is necessary to give it a legitimate and clear expression. The need for clarity and legitimacy of its terms and purposes requires framing a new and separate instrument on it. This debate on the right to development ultimately culminated into the establishment of a working group on right to development in 1981 to work out a declaration on the right to proclaim binding effects. These texts represent that the idea has nevertheless been embedded in the agenda of the

²⁷ Cited in footnote no. 81 IN Rich, n. 22,p. 301.

international community and representing a movement of ideas after a gap of over fifty years was ultimately established in the form of the Declaration on the Right to Development.

CHAPTER V

THE DECLARATION ON THE RIGHT TO DEVELOPMENT (1986): A BASIS FOR ACTION

The previous chapter dealt with the premise that development and its constituent principles have been framed out in various instruments of international law spanning a period of around fifty year. But, the urge for a clarity on the relationship between the two concepts and the need to create a legally binding instrument led to the adoption of a Declaration on Right to Development in 1986. The Declaration represents the solution towards creation of a harmony between the concepts of development and human rights as one of the most urgent tasks facing the international community. Infact, “a landmark event in the enunciation of new human rights occurred when on the 4th of December, 1986, the General Assembly adopted the Declaration”¹. The declaration founded the right to development and defined it first as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, and contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised” [Article 1]².

The establishment of an inter-governmental working group of experts, in 1981, institutionalized, the ongoing debate on the right to development. A fifteen member working group was established by the commission on Human Rights (CHR), to study the scope and content of the right to

¹ Upendra Baxi, *Mambrino's Helmet ? : Human Rights for a Changing World Order* (New Delhi, 1994) p. 22.

² Text of the Declaration Published by UN Reproduction Section, N.Y., 1986.

development and the most effective means to ensure the realization of the economic, social and cultural rights in all countries as enshrined in various international instruments on human rights, but paying particular attention to the obstacles encountered by the developing countries in their efforts to secure the enjoyment of human rights.

This decision was approved by the Economic and Social Council on eighth May, 1981 and establish to working group on right to development but taking into consideration at the same time, the need for an equitable geographical distribution.

COMPOSITION OF THE WORKING GROUP

The working group was composed of the following countries: United States of America, union of Soviet Socialist Republic, Peru, France, Algeria, Iraq, Cuba, Panama, India, Syrian Arab Republic, Senegal, Ethiopia, Yugoslavia, Netherlands, Poland. In the eight session of its work, the expert from Poland was replaced by an expert from the Bulgaria. Since its establishment in 1981, the working group conducted nine sessions: Two in 1981, three in 1982, two in 1983 and finally, two in 1984. In addition to the governmental experts, the observers for various member states of the UN, U.N. bodies (such as the office of the Director General for External Relations and Inter-Agency Affairs, office of the United Nations High Commissioner for Refugees) and specialised agencies (United Nations Education, Scientific and Cultural Organisation, world Health Organisation) National liberal movements, Palestine liberation Organisation, and various non-governmental organisation (such as the International Alliance of Women, International Commission of Jurists, International Council of Jewish Women, International Association for Religious Freedom etc.) in consultative status with the UN were also among the participants.

WORKING GROUP ACTIVITIES

In the first year of its working in 1981, the group held two sessions at Geneva from 20 to 24 July and from 23rd November to 4th December. The group embarked upon a general discussion on the subject and reached upon a consensus on a number of issues. First and foremost, it affirmed fully that right to development is an inalienable human right. The group then decided upon an agenda to conduct their discussions:

- 1) The scope and content of the right to development;
- 2) The most effective means to ensure the realization, in all countries, of the economic, social and cultural rights enshrined in various international instruments;
- 3) The obstacles encountered by developing countries in their efforts to secure the enjoyment of human rights.
- 4) Concrete proposals for implementation of the right to development and for a draft international instrument on this subject³.

On the scope and content of the right to development, the experts emphasised on both the collective and individual dimension under this aspect, their discussions centered around the holders of the right, its object, its basis, its content and finally its legal nature. Under the collective dimension, the holders of the right were considered to be people and states. Thus, in connection to this the duty of solidarity and interdependence especially between developed and the developing countries was emphasized, so that each state acts in a way that read to the enjoyment of the right to development. A major opinion was that, in stressing upon the collective

³ UN DOC E/ CN.4/1489/1982, CHR, Session Thirty eight, para 14,p. 5.

dimension, there seemed to be an overemphasis on states, that tends to neglect other collectivities like the village bodies and cooperative and other mediating structures (an indication that the stress on international action be substantiated by that at the national level). In its collective dimension, the object of the right was considered to establish conditions of equal opportunities for all, integral development of peoples and states and democratization of international relation. The basis of the right to development lies in the basic principles on international relations as contained in the Charter of the United Nations, the Declaration on principles of International Law Concerning Friendly Relations and Cooperation among states in accordance with the Charter of the UN [resolution 2625 (XXV)] and other resolutions adopted within the UN specially those related to the establishment of the new international economic order.

The content of the right in the collective dimension, according to the experts entailed a duty for each states to cooperate with others for ensuring a harmonious global development and the requirement to establish a new international economic order by, granting, to the developing countries in all areas of international cooperation, non-reciprocal preferential treatment as far as possible.

Differences prevailed over the legality of right to development because of the consequence that emerge implying that some states owe compensation to others. In the context of this duty, some experts claimed the right to be a concept corresponding to some kind of moral imperative but some experts felt that the right to development was important in specific delineation of the duty of states to cooperate.

In its individual dimension, the holders of the right are individuals, the object of which is to bring about his multidimensional fulfillment. The

content of the right in its individual dimension is a combination of all the human rights of individuals relevant to his full development. On the legal nature of the individual's right to development it was stressed that it was neither a right nor a moral imperative, but rather, a synthesis of rights and moral imperatives"⁴.

The unanimous opinion of all experts was that both the dimensions of the right to development were interdependent because their ultimate aim is the integral development of the individual.

The means to ensure the realization, in all countries, of the economic, social and cultural rights enshrined in various international instruments: These means according to the experts centre around both the national and international means. The national means require, that all participate in the process of decision making and its implementation. For an overall development it is necessary to encourage development at the local level with respect to the rights of women and minorities. The effective exercise of right to development is linked to certain means at the international level. One of the essential of these is the elimination of colonialism, racism, neo-colonialism, apartheid and all forms of aggression and interference in internal affairs of the state. At the same time the relations among states must be most democratic with participation of all in major international economic institutions especially the International Monetary Fund (IMF). Another major aspect of this is the need for active assistance to promote the social and economic development of developing countries.

The obstacles encountered in enjoyment of human rights by the developing countries - It was agreed that this requires a global approach so

⁴ UN DOC E/CN.4/1489, n. 3, para 32, p. 9.

as to enable these countries to secure the enjoyment of human rights. At the international level again colonialism, neo-colonialism, racism, apartheid and the obstacles emerging out of international trade and investment pattern were considered as the major obstacles. At the internal level, ignorance, poverty, disease were the obstacles faced by these nations. Stress was also laid on lack of participation and unequal distribution of development process. On the whole, however, the experts also noted that demands of development cannot justify any violation from fundamental human rights.

On the question of a proposed international instrument on the right to development, all possibility of having a convention, a resolution or a declaration were considered, finally deciding upon a declaration.

On the whole, the first session was devoted to a general debate on what actually the right to development implies, and what are its implication for all the actors on the scene namely, the states [both developed and developing] and the individual and various international organisation as well.

In a resolution on 14th December, 1981 (resolution 36/133 by a vote of 135-1-3 (recorded) on "Alternative approaches and ways and means within the United Nation system for improving the effective enjoyment of human rights and fundamental freedoms"⁵ the General Assembly reiterated that establishment of the new international economic order was essential for the promotion and full enjoyment of human rights and declared the right to development as an inalienable human right and requested the CHR to promote the right in accordance with the proposals of the working group.

⁵ GAOR, Plen-mtgs, Session Thirty six, Vol. III, p. 1730.

RECORDED VOTE:

IN FAVOUR: Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Belgium, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussia, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malaysia, Maldives, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Surinam, Swaziland, Sweden, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, USSR, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Uppervolta, Uruguay, Venezuela, Vietnam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

AGAINST: United States.

ABSTAINING: Bahrain, Canada, Federal Republic of Germany, Israel, Italy, Jamaica, Japan, Luxembourg, Malawi, Portugal, Saudi Arabia, Spain, United Kingdom.

ABSENT: Albania, Belize, Congo, Dominica, Panama, Saint Vincent, Vanuatu.

Explaining its negative vote, the United States⁶ said that the resolution was unacceptable because it sought to divert attention from individual to collective human rights; the right to development was an individual right to personal development and it was debatable whether it was inalienable. Along with the United States, the Federal Republic of Germany⁷, which abstained said that the “draft prejudged the discussion in the working group” and they also did not believe that the right to development or the establishment of a new international economic order were prerequisites for guaranteeing other human rights.

Countries like Ireland, the Netherlands and New Zealand which voted for the resolution expressed reservations on paragraph 8. of the concerned resolution (36/133) declaring the right to development as an inalienable right. Their opinion was similar to that of Federal Republic of Germany that any decision on the right to development was premature. Finland and the Netherlands had similar views on the paragraph 8 of the resolution. Finland⁸ also added that the right to development was the right of the individual to participate fully in the development programme and enjoy the benefits it bestows, while the right of nations and peoples to development had been enshrined in the Assembly, 1974 Charter of Economic Rights and Duties of States, a document that deals with the collective rights, as different from individual rights. Countries like Cuba and India thought that the restructuring of international economic relation in a just and equitable

⁶ UN Year Book, N.Y., Vol. 35, 1981, p. 922.

⁷ *ibid*, p. 922.

⁸ *ibid*, p. 923.

manner was essential to promote the international protection of human rights.

On 9th March, 1982, the CHR noted the recommendations of the working group and requested it to submit proposals for a draft declaration on right to development in 1983. The working group continued discussions on the agenda adopted by it in the previous year of its working.

It held three sessions in 1982 at Geneva (one in January, the second in June-July and the third in November and December). In the first session the group agreed on the preparations of a draft declaration. The next two sessions the working group established a drafting committee of five governmental experts (Algeria, Cuba, France, India and Yugoslavia,) open to all other members. This committee was entrusted with the task of submitting draft guidelines for a declaration on the right to development and draft provisions for a preamble as well as the operative part. At its fourth session in July the working group considered the provisions for the preamble and at its fifth session on 26th November, 1982. The group decided that the operative part must consist of the following parts:-

Part I - Principles and Objectives [definition and content]

Part II - Means

Part III - General Provisions⁹

The group adopted these suggestions in form of a report and transmitted it to the commission at its thirty-ninth session. In comparison to its work in the first year of its establishment (1981) the group moved a step forward . It showed a definitive movement towards progress: marked by a

⁹ UN DOC E/CN.4/1983/11, CHR, Session Thirty nine, para 9, p. 3.

progress from the stage of discussion to that of concrete formulation and structure.

In 1983, the CHR decided to further reconvene the working group to elaborate on the draft declaration, a decision that was approved of by the ECOSOC. The working group considered several proposals at its sixth session and on this basis they prepared a 'technical consolidated text' annexed to UNDOC E/CN.4/1985/11. In the seventh session the group adopted the preamble provisions of the draft declaration compiled in the same report UN DOC/E/CN/4/1984/13. In the same year the working group received the following texts for further work on the draft declaration:

- 1) Draft Declaration submitted by the group of Non-Aligned countries on 16th June, 1983;
- 2) Draft Declaration submitted to the group by the experts from France and Netherlands.
- 3) Proposal from the USSR on 17th June, 1983.

At the same time the group received several proposals with respect to various paragraphs of the preamble and the first operative paragraph on which consensus was not reached. [Preambular paragraphs 6, 9, 12, 15, 16 of the Declaration].

In 1984 the CHR decided to recommend the group with the same mandate. The working group met in two sessions in 1984, the eight from 24th September to 5th October and the ninth from 3rd December to 4th December.

At its eight session, the group considered paragraphs 6, 9, 12, 15 and 16 of the preamble to the draft declaration on the basis of the technical consolidated text (as mentioned earlier). At this session the working group

also agreed that paragraph 16 of the technical consolidated text should be read jointly along with article 1 of the operative part. The ninth session had the same agenda that is consideration of paragraphs 6,9,12,15 and 16 in details so as to reach a consensus. Paragraph 16 of the preamble was jointly discussed again with article 1, the central feature of the declaration concerning the definition of right to development.

TECHNICAL CONSOLIDATED TEXT AS ANNEX IV IN UNDOC E/CN. 4/1985/11

Preambular paragraphs:

Paragraph 6 Recalling further the right of peoples to self-determination, by virtue of which all peoples have the right to freely determine their political status and have an inalienable right to pursue freely their economic and social development and to exercise full and complete sovereignty over all their natural resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law.

In the eight and ninth session, the working group reached a consensus on the inclusion of the first half. With regards to the second half that refers to the sovereign right of peoples to freely dispose of their natural wealth and resources ..." no consensus was reached.

Paragraph 9 concerned at the continuing existence of serious obstacles to the free development of the human being such as the denial of civil and political rights and individual freedoms and the absence of conditions favourable to the implementation of economic, social and cultural rights.

Differing percepts on the paragraph led to the failure in securing general agreement to the text proposed.

Paragraph 12 Reiterating that progress in the field of disarmament would considerably promote progress in the field of development; and that resources released as a result of measures taken in the sphere of disarmament should be directed forwards the economic and social, development of all nations, so as to contribute as well to bridging the gap existing between the economies of developed and developing countries”.

In the ninth session, it was proposed that the provisions of the paragraph must be supplemented by another paragraph 12 bis which would refer in particular to the duty of the states in maintaining international peace and security. An agreement was reached in form of the following text:

“Reaffirming that there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all people and in particular those of the developing countries”¹⁰.

Article 15 Reconizing further that the establishment of a new international economic order is an essential element for the effective promotion and the full enjoyment of human rights and fundamental freedoms for all.

The Group however, failed to reach any agreement on the alternative proposals put forth.

Article 16 Recognizing also that the right to development is an inalienable human right, individually and collectively, and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations.

¹⁰ UN DOC E/CN.4/1985/11, CHR, Session Forty one, p. 4.

Article 1

1. The right to development is an inalienable human right of every person, individually or in entities established pursuant to the right of association, and of other groups, including peoples. Equality for opportunity is a prerogative of nations and of individuals within nations..."

An exchange of views was also held on the articles 2 to 4 concerning the responsibility for development in its individual and collective dimension and the effective realisation of right to development. But no general consensus or agreement could be reached from the proposals put forward. The group tried to fulfill its mandate by adopting each provision by consensus but was unable to do so. The report submitted the CHR in its forty first session as document E/CN.4/1985/11 that contains the understated documents by the working group, a draft declaration by the non-aligned countries of 16th June, 1983; a draft declaration submitted by France and Netherlands, Technical Consolidated text of 1983, USSR proposals for article 1 and the texts of the preamble on which general agreement had been reached at the seventh and ninth session.

In March, 1985 the CHR reiterated that the right to development was a human right and that the equality of opportunities for development was a prerogative both nations and of individuals, and to submit report to the General Assembly through, the ECOSOC. The ECOSOC approved the decision of the CHR to transmit all necessary reports and document to the Assembly so as to enable it to adopt the declaration on right to development.

By the decision 40/425 adopted by the General Assembly on 13th December in 116 Plenary meeting decided to transmit all documents to the

1986 session so as to consider the question then. The decision was approved by the third committee without vote. The decisions and amendments to be proposed were postponed from the fortieth session to the forty-first session, wherein the third committee considered the draft resolutions. The first meeting was sponsored by Bangladesh, Brazil, Bulgaria, Colombia, Cyprus, Ethiopia, German Democratic Republic, Guyana, Nigeria, Peru, United Republic of Tanzania, Yugoslavia, later joined by India, by which the General Assembly would adopt the declaration. An amendment to the draft declaration; proposed by France and Netherlands was to replace article 1, paragraph 2, stating that the right to development implied full realization of the right of peoples to self-determination which includes the inalienable right to sovereignty over natural wealth and resources by the human right to development also implies the full realization of the right of peoples to self-determination, whereby all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence”¹¹. Pakistan’s amendment was meant to add a new article 4 to the draft resolution which would state that

“1. The achievement of the right to development required concerted international and national efforts to eliminate economic deprivation, hunger and disease in all parts of the world without discrimination, and,

“2. To this end, international cooperation should aim at maintenance of stable and sustained economic growth with simultaneous action to increase concessional assistance to developing countries, build world food security,

¹¹ GAOR, Session Forty one, Annexes, UN DOC A/41/925, Third Cttee Report, p. 1.

resolve debt burden, eliminate trade barriers, promote monetary stability and enhance scientific and technological co-operation and to renumber the subsequent articles accordingly¹².

At the same meeting, the representative of Yugoslavia orally revised the annex to the draft resolution as follows:

(a) the seventh preambular paragraph which read:

“Recalling also the right of peoples to exercise their full and complete sovereignty over all their natural wealth and resources”

was replaced by the following:

“Recalling also the right of peoples to exercise, to the relevant provisions of both international covenants on Human Rights, full and complete sovereignty over all natural wealth and resources”.

(b) Article 1, paragraph 2 which read:

“2 the human right to development also implies the full realization of the rights of peoples to self-determination of the rights of peoples to self-determination, which includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources”.

was replaced by the following:

“2 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”¹³.

¹² UN DOC A/41/925, Third Cttee Report, n.11, p. 1.

¹³ *ibid*, p. 2.

In 1986, the CHR urged that the General Assembly give the highest priority to the adoption of the draft declaration in 1986 and to reconvene the group in 1987 so as to study the ways to promote the right to development, approved by the ECOSOC on 23rd May, 1986. On 4th December, 1986, the GA acting on the recommendation of the third committee adopted resolution 41/128 entitled the "Declaration on the right to development"¹⁴ (in the plenary meeting number 97). It was approved by the third committee [DO C A/41/925 and Corr.1] by a recorded vote of 133-1-9, on the 28th November 1986 (in meeting 61).

Recorded vote:

IN FAVOUR - Afghanistan, Algeria, Angola, Antigua, Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Darusslam, Bulgaria, Burkina, Faso, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El-salvador, Equatorial Guinea, Ethiopia, Fiji, France, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan, Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay,

¹⁴ GAOR, Session Forty one, UN DOC A/41/PV. 97, p. 64.

Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saotome and Principe, Saudi Arabia, Senegal, Seychelles, Sierraleone, Singapore, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad, and Tobago, Tunisia Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Vietnam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

AGAINST: United States of America

ABSTAINING: Denmark, Finland, Germany Federal Republic, Ireland, Israel, Japan, Sweden, United Kingdom of Great Britain, Northern Ireland.

VOTING PATTERN:

With a positive vote of 146 for it, the only negative vote came from the side of United States of America and all abstentions from the western European or western oriented states for example, Japan and Israel.

The voting pattern in this case resembles that of the Charter of Economic Rights and Duties of States (1974) with the economically powerful states either abstaining or opposing it. The United States of America (USA) stated that the Declaration was “imprecise, confusing and inconsistent with the proper concept of human rights as rights of the individuals”¹⁵. It feared that the declaration would lead to the dilution and confusion of the existing human rights agenda of the United Nations. In addition to this the USA was opposed to the view that development was to

¹⁵ Pierre Makhlouf, “The Right to Development and the New International Economic Order : A Legal Perspective” , In A.P.Vijapur, ed., Essays on International Human Rights (New Delhi, 1991), p. 222.

be principally achieved by the transfer of resources from the developed to the developing countries. These criticisms by the USA were concretized by its withdrawal from the working group on the right to development in 1987.

The statement of the representative of the United Kingdom (UK)¹⁶ reflects opposition at the same level as that of USA. The representative stated that the UK believed that the text, in the twelfth preambular paragraph and Article 7, provided an over simplified view of the complex relationship between disarmament, security and development and it did not accept a link between the promotion and protection of human rights and establishment of a new international economic order. It also disagreed with the indivisibility and the interdependence of human rights as expressed in the tenth preambular paragraph and Article 6, and that the reference to the right to development as an inalienable human right in the last preambular paragraph and Article 1 was unclear. While agreeing that states should take steps to promote development, the United Kingdom could not accept that it should become an obligation under international law.

There seemed to be a lack of consensus and unanimity even in those who voted for the declaration. For example, Canadian approach was that only, "individuals or group of individual could have rights and recognised the right to development as a human right"¹⁷, in the sense of effective implementation and enjoyment of all internationally recognised rights.

Iraq, and Ireland while voting in favour also expressed reservations. Ireland had reservations with regard to the unspecific use of references to

¹⁶ Makhoulf, p. 223.

¹⁷ *ibid*, p. 224.

the human rights of peoples and found the affirmation of the right to development as an inalienable human right unconvincing¹⁸.

One of the major socialist state, the Soviet Union attached a lot of significance to the declaration and states that the human rights should be based on a genuine equality in rights of all peoples and all individuals¹⁹. Brazil went further and stated that the declaration “states a cardinal principle in the human rights systems and should be regarded as an indispensable companion piece to the universal declaration of Human Rights”²⁰.

In the vote on the Draft Resolution in the plenary meeting of the General Assembly, the first member to put forth its views on the Declaration on the Right to Development was the Norwegian representative. The representative expressed concern over the existing disparities in the world and the necessity of improving the plight of the developing countries. Speaking on the declaration, she affirmed that the declaration did contain of several positive elements but still Norway had some reservations to it in the present form. According to her, “the question of human right would be ill-conceived if the right of the states became a primary concern in the field of human rights”²¹. She expressed Norway’s anxiety on the question of balancing the rights of individuals against national interest. But, despite these reservations Norway decided to vote in favour of the declaration so as to steer the issue of right to development in a direction that would take into consideration their concerns.

The representative from Finland made a statement on behalf of Denmark, Iceland and Sweden. Similar to the arguments presented by the

¹⁸ UN Year Book, N.Y., Vol. 40, 1986, p. 720.

¹⁹ Makhlof, n. 15, pp. 224-25.

²⁰ *ibid*, p. 225.

²¹ UN DOC A/41/PV. 97, n. 14, pp. 56-57.

Norwegian representative, he expressed agreement on the fact that there lies a connection between the enjoyment of economic, social and cultural rights and the stage of development of a nation. But, Despite positive aspects of the declaration in form of the role of the individual, their delegation decided to abstain in the voting. According to him, “the questions of human rights would get distorted if the rights of states were dealt with under this label”²² that “our delegation cannot agree with the formulations such as the human rights of the peoples” adding further that “we also regret the tendency to stress the rights of states rather than the human rights of the individual, the economic and social rights move than the civil and political rights”²³.

French representative also explained his vote. Voting in favour of the resolution, he stated that there is no doubt that human rights has a two fold dimension which comprises both its individual and collective aspects. Hence, the French delegation opined that it was thereby, futile to make use of the concept of “human rights of peoples and human beings which seems to be clumsy and inelegant”²⁴. Their arguments then, clearly reveal a pattern of western states as totally against the right being conceived as a collective right and still focus on its individual aspects. The comments of the states on the declaration indicate a lack of agreement on its provisions. Since its establishment the working group has been involved in evolving a consensus on the Declaration but it has not been successful. The Declaration has been formulated as a kind of compromise text so that it can be interpreted in a way that depends upon the approach of the state (or states concerned).

The major difference in the debate on the right to development lies in the differing positions of the developed and developing countries on the

²² UN DOC A/41/PV. 97, n. 14, p. 77.

²³ *ibid*, p.56-57.

²⁴ *ibid*, p. 79-80.

nature of right. The former do not agree with the right been formulated a collective right of the states, and emphasize its individual nature are against the emphasis on NIEO and the legality existence of the rights which might imply consequent obligations on them. The developing countries on the other hand emphasize the need to introduce a NIEO and the right as a collective right.

DECLARATION ON RIGHT TO DEVELOPMENT²⁵ : A study of its contents and structure.

PREAMBLE TO THE DECLARATION :

An observation of the preamble to the declaration immediately reflects its descendance from the earlier major instruments adopted by the UN that is, the Universal Declaration on Human Rights, the two International Covenants and other subsequent adoptions. The preamble embraces within itself the following major elements:

- the right of people to self determination that is, to be able to freely pursue their political, economic, social and cultural development,
- as a corollary to their right to self determination, a full and complete sovereignty over natural resources,
- interdependence and indivisibility of all human rights of man with equal attention and protection to be given to civil and political rights and the economic, social and cultural rights.
- international peace and security as the essential elements in realizing the right to development

²⁵ Text Published by UN Reproduction Section, N.Y.

- With human person as the central subject of the development process attempts should be made to devise the development policy to enable the individual to be the main participant and beneficiary of development;
- With equality of opportunity a prerogative both of nations and individuals who make up the nations, resources must be devoted towards the economic and social development of all especially those people in the developing countries.
- efforts at the international level to protect and promote the human rights of all must be accompanied by all to establish a new international economic order.

The preamble premises all those concern which are of relevance for the entire humanity but lays special emphasis on those provisions that have been largely relevant to the conditions prevalent in the developing countries. It recognises the need for an equitable international economic order for protection and promotion of human rights. The preamble makes an attempt to acquire comparative importance for the economic, social and cultural rights along with the civil and political rights.

PROVISIONS OF THE DECLARATION:

The most explicit articles of the declaration are article 1 and 2. Article 1 states that 'right to development is an inalienable human right' and article two states that "human person is the central subject of development". These two articles form the essence of the right focusing on a human centered development. The rest of the declaration provisions deal with the actions essential for implementation of the right.

The fact that realization of the right to development is a duty and responsibility of all actors in development, the international community, the states at both international and national levels, the international organisations is delineated in Article 3 to 8. Article 3 clearly states this responsibility of states. It says that, "states have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development". Article 4 clearly refers to the formulation of international development policies by states recognising developing countries as a special category of states requiring "sustained action to promote more rapid development of developing countries. As a compliment to the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development" [Article 4, paragraph 2]. International Dimension of the right to development and provision of assistance to the developing countries in an explicit recognition, gives credibility to it, been a right of states as of individuals.

One of the most innovative and new addition to human rights field is the importance it attaches to the concept of "participation". Article 2(1) states that human person is the central subject of development and should be the active participant and beneficiary of the right to development Article 2, para 3 lays down upon the states the "duty to formulate appropriate development policies that aims at the constant improvement of the well-being of the entire population". But, the edifice of this duty in turn lies upon, the function of active participation by all the individuals.

In other words, the declaration aims at identifying development as an "appropriate development when it is identifiable with participatory

development”²⁶. This means that developmental decisions taken by a few would be illegitimate and that those policies that treat people as objects of development and not its subjects are not proper. Participation also implies a fair distribution of results of development among all those who participate in it. Thus, the declaration adds an important element to the concept of development that precedes as well as follows development. But, participation of people in development as a right implies that there must be a democratization of national as well as international institutions and equitable international economic relations. Thus, thereby linking these concepts to other referred concepts in the declaration such as NIEO and international action towards development. Thus, Article 3, para 3, states that “the states have the duty to cooperate with each other in ensuring development and eliminating obstacles to development, state 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 interests cooperation among all states, as well as to encourage the observance and realization of human rights”.

A major element is introduced in Article 6. It states that ‘all human rights and fundamental freedoms are indivisible and interdependent’ and that “states should take steps to eliminate obstacles to development resulting from the failure to observe civil and political rights, as well as economic, social and cultural rights”. [Article 6, para 1 and para 3]. Moreover, “this article is an answer to those who fear, that the concept and the declaration on the right to development constitute an attempt to water down international efforts for realization of human rights”²⁷.

²⁶ Baxi, n.1, p.25.

²⁷ Danilo Turk, “The Right to Development as a Human Right”, In K.P.Saksena, ed., Human Rights : Perspective and Challenges in 1990 and Beyond (New Delhi, 1994), p. 174.

Alongwith all this, the declaration lays down certain other guidelines towards the realization of the right to development. Under Article 7, maintenance of international peace and security are regarded as essential for development, ..., "general and complete disarmament under effective international control, as well as to ensure that the resources released are used for comprehensive development, in particular that of developing countries.

From the view of participation of all in development, Article 8 makes a reference to effective measures to be under taken to ensure that women play an active role in the development process [Article 8, para 1].

SCOPE OF THE DECLARATION

The emergence of the concept of right to development emphasizes the interdependence of human rights and development and thus, establishes a new standard of achievement in the field of human rights, after a gap of thirty-seven years since the proclamation of the Universal Declaration on Human Rights and the two International Covenants on Civil and Political and Economic, Social and Cultural Rights.

"The Declaration on the Right to Development reflects the international community's ambition unceasingly to raise the level of protection of human person and of his/her freedom, dignity and well-being"²⁸.

The declaration comprehensively portrays the conception that development in its economic, social, cultural and political dimensions and the priority to the entire realization of all human rights and self-determination of peoples. It goes beyond the traditional concept of economic, social cultural development by integrating in it the political

²⁸ UN DOC E/CN.4/1996/24,CHR, Session Fifty Second, Pt. 2, p.8.

dimension, with popular participation and social justice as its basis and human being its main beneficiary, calling for international action by all as mentioned earlier on.

“The Declaration on the Right to Development stems from the will of the international community to apply to the strategies pursued so far in the field of human rights and development, the corrections needed to arrive at a comprehensive and integrated view of human rights and development”²⁹.

By providing a comprehensive definition of development the [economic, social, cultural, political] the Declaration aims at revising the existing national and international development strategies as to overcome situations like the disappointing results of the development efforts made by the United Nations. With an integrated view of development encompassing all facets, the Declaration reflects on the interdependence and indivisibility of the two sets of rights and tries to “close the split”³⁰ that was caused in the human rights agenda by enunciation of two separate covenants in 1966.

The Declaration in essence has led to the establishment of an organic link between the two concepts of development and human rights. Thus, a new approach is extend with states that denial of human rights constitutes an obstacle to development, and development that fails to take into cognizance respect for all human rights would be incomplete. Thus, it represents a two-way relationship leading to a status that can be described as one being two sides of the same coin.

The Declaration came into being as a compromise text, which is clear from the sixteen paragraphs in the preamble covering several aspects as mentioned earlier. The title of the document as a Declaration shows that it

²⁹ UN DOC E/CN.4/1996/24, n.28, Pt 3, p. 9.

³⁰ *ibid*, para 69, p. 9.

has great moral and political force as that of UDHR and that it is meant to create legally binding effects and intends to create obligations “but the use of the non-obligatory word ‘should’ throughout most of its text indicates that it will be difficult to identify the extent to which states have become legally bound”³¹. But, despite this at least an agreement has been reached to recognise the right to development as a general principle of international law. While the declaration has “great weakness as a legal document”, it has been predicted to be “of paramount importance as a signpost to the direction of future human rights strategies”³². Thus, although the Declaration as a human rights instrument indicates the rights and obligations of states, a greater clarification of the same is required.

The declaration to be recognised in its entirety, requires that the provisions of official development assistance (ODA) which exists [not in line with the obligations arising out of right to development, but as an obligation in itself] but also the introduction of NIEO which has been opposed totally by those states which hold the economic power.

The declaration admits that international action is necessary for implementation of the right to development but it also places equal emphasis on national policy. Thus practice of right at the national level may eventually lead to its gradual acceptance as a human right and lead to pressures upon those who abstained or voted against it to acknowledge an affirmative vote in its favour.

An important aspect to be noted in the entire issue is that all third world attempts right from the efforts to introduce resolutions claiming equal

³¹ Makhlouf, n.15, p. 225.

³² Asbjorn Eide, “National Sovereignty and International Efforts to Realise Human Rights”, In Eide and Hagtvet, ed. Human Rights in Perspective : A Global Assessment (Oxford, 1992), p. 26.

respect for economic, social and cultural rights to the right to development, the developed states were always either opposed to or abstaining on these issues. Thus, these are resolutions in main representing the views of the Developing countries only. Even on the Declaration on the Rights to development the economically developed states, either by abstaining or opposing have slowed down its laying down as a principle of international law.

FUTURE WORK ON THE RIGHT TO DEVELOPMENT

After the adoption of the Declaration in 1986, a number of follow-up activities have taken place towards the implementation of the right.

The CHR decided to reconvene the working group of governmental experts on the right to development in 1987 with a mandate to forward proposals on the measures to promote the right to development. The group appreciated the adoption of the Declaration as one of the most significant human rights instrument to have come out of the forty first session of the General Assembly. In their tenth session the group studies the measures that would help in promoting the right to development. Their recommendations incorporated in UN DOC E/ CN.4/1987/10(CHR Session Forty third)include the following :

- 1) Dissemination and popularization of the contents of the Declaration;
- 2) To organize research and educational activities to acquaint all the countries with the provisions of the Declaration;
- 3) To invite states, UN organs and Non-governmental organization (NGO's) in consultative status to identify obstacles at the national and international level that affect the promotion of the right to development.

Their recommendation mainly centered around research, educational and informative tasks to be carried out to promote the right to development and to deepen their understanding of the right to elicit the views of all governments. UN organs and other International Organisations/NGO's on the subject. In the same session, the US representative expressed the inability to join in the consensus on proposals submitted and thus, after the tenth session withdrew from the working group. According to the US representative³³, the use of limited resources available for work on human rights in the UN could be spent on activities that had a much higher priority than that of continuation of work on right to development. He expressed serious reservations on codification of right to development as a principle of international law and stated that on the question of individual's right to development, most of the proponents of that right denied their own citizens the opportunity to develop in all possible ways.

At its eleventh session in 1988 the group was entrusted to study the analytical compilation of the views offered by the governments, UN organs and specialized agencies, and other governmental and NGO's on the implementation of the right. On the basis of these replies the group was asked to submit its recommendations on measures to implement the declaration. The group recommended carrying out proposals as mentioned earlier in 1987 on widening the understanding of the right to development as contained in (E/CN.4/1987/10 of 29th Jan, 1987 Paras 28 (b), (c) and paragraph 29). They also felt the need to establish an evaluation mechanism to monitor and review the actions of UN organs and specialized agencies in implementing provisions of the declaration.

³³ UN DOC E/CN. 4/1987/10,CHR,Session Forty third, Statement of US Representative, Annex II, p. 11.

For the early implementation of the declaration, the group recommended the following measures :

- (1) To continue to examine the right to development in order to ensure full exercise and enhancement of this right; (representing article 10),
- (2) To continue to study the legal aspects of the right to development as an inalienable human right (representing Article 1),
- (3) To invite states, to ensure equality of opportunity for all in access to basic resources such as education, health services food, housing....fair distribution of income and an active role for women in development, at the national level (Article 2 and 8),
- (4) At the international levels to enhance urgent action by the international community in order to implement the important measures identified by the Declaration on Right to Development. These include - respect for the right of self-determination, full and complete sovereignty over their natural resources; colonialism, foreign domination, establishment of a new international economic order and co-operation to promote more rapid development of developing countries and efforts for disarmament to use those resources for development (representing article 3,4,5,7 of the declaration). The expert group recommended that the CHR should monitor progress towards solution of these issues as they present serious obstacles in realizing the objectives put forth by the right to development.

In 1989 session, the working group “put forth that to obtain more specific views on the implementation of the Declaration, a questionnaire should be devised. A format of the questionnaire that could be possible was

annexed to their report UNDOC E/CN.4/1989/10 on the twelfth session. It included the following type of questions:

- 1) Which are the essential elements of the content of the right to development in the context of the domestic socio-political and legal system (art.1).
- 2) How is the duty of states to formulate appropriate development policies (art 2, para 3) being carried out and which are the main difficulties in this process.
- 3) What steps should be taken to give effect to the provisions of article 4 of the Declaration relating to the duty of states to formulate international development policies so as to facilitate the realization of the right to development. But, what is important to observe is that in this session (12th session in 1989) only West Germany (one of the abstaining states in the voting on the declaration) took part. Those who participated were largely the developing countries except for Austria, France, Ireland, Italy, the Netherlands, and West Germany. A lack of participation is thus, reflected by the major developed states and this does not offer positive notes for the implementation of one declaration. The Declaration may be regarded as an extension of the UN charter and keeps within the aims and purpose of UN but does not seem to create an obligation of general international law, because it does not have the status of an international treaty. Not has any sort of reporting or implementation machinery. Nevertheless, it remains a recognised principle of international law and ever widening interpretation of changing needs. The Declaration on the right to development and the right itself have been strengthened by the consensus displayed at the Vienna conference.

At the world conference on Human Rights held at Vienna in 1993 June, there was further progress in the evolution of the right to development. The conference reaffirmed that the right to development as set out in the Declaration as (Article 10) a “universal inalienable right and an integral part of fundamental human rights” and also reiterated that “human persons is the central subject of development”. It stresses that economic development in the poorest nations is the collective responsibility of the international community. It also reflects upon the fact that the establishment of equitable economic relations at the international level is essential from the point of view of sustainable development. Therefore, the debt burden must be alleviated, poverty and illiteracy in various countries combated. But, at the same time these efforts must be substantiated with the national level policies.

The Vienna conference may reflect a sort of consensus on the conflicting view of the member of states. But, as a solidarity right the right to development demands positive action by all states to cooperate internationally, but the abstentions and opposing votes of the major states [economically] have focused on the non-applicability of the rule to themselves or at least lead to slowing down of the process of General recognition of the right in the international law. Moreover, there is a need to bring in inter-disciplinary expertise to tackle the demands put forth by the multi-dimensional nature of the right to development.

CHAPTER VI

CONCLUSIONS

The observations that have been recorded in this work embrace clearly a multidimensional subject. It represents a simultaneous attempt at analysing the two major challenges facing the mankind to day that is, development and human rights, in a wider perspective.

The evolution of international concerns on human rights emerged only after the barbaric results of the second world war, prior to which the international concerns with human rights was either absent or limited to a few areas of life. The growing concern with the issue arose with the establishment of United Nations Organisation, which led to the adoption of the Universal Declaration on Human Rights and the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted in 1948 and 1966, respectively. These concerns transformed an individual's status into one of the focal points of the international systems as compared to its pre-war position. This is a position that has carried on till now even by the emergence of new rights. Since the 1970's, certain new concerns have emerged on the world scenario ranging from development to environment to that of common heritage of mankind. From amongst these, the right to development has been the most prominent of all.

It was mooted as a human right in 1972, followed by a sustained activity in the UN, culminating into the adoption of the Declaration on the Right to Development in 1986. While, this chronology is simple to follow, the political under currents underlying it are quite different and difficult.

The origins of the right to development in this context, can be traced in the emergence of the third world countries on to the international scenario. Their object has been to change the flow of international law to accommodate their demands as it had been dominated by the developed states. Thus, from human rights to self-determination (political independence) they demanded self-determination in terms of economic independence. This was based on their historical experiences of colonialism and neo-colonialism etc. This conditions perpetuated an international economic order that was in favour of the Western states. Thus, their demand for the New International Economic Order. This translated certain factors essential in bringing about an equitable international economic relations. The NIEO then, represented the means for bringing about a global development and that reparations were due from colonial powers to them. But, these efforts received continuous opposition of the developed states. The third world demands then moved on to the human rights fora where first they translated these demands into greater attention for economic and social rights. According, to them other than the civil and political rights, economic, social and cultural rights were as significant for development as civil and political rights. It was as necessary to pay attention to the causes of violations of human rights along with their symptoms. Thus, it enhances the right to life, that is the core human right. By recognising these economic, social and cultural rights, it gives access to those basic conditions required for survival of human life or to live as a human being. At the same time, with the depressing results of development decades it came to be recognised that development is no longer synonymous with economic growth alone but became more endowed with the human element and realization of all human rights. But, in the third world states with the typical situation of under-

development, regarded a consequence of colonialism, domination and dependence, it becomes difficult to realise human rights for all with ninety percent of resources been controlled by a handful of states, human rights, then cannot be realised, especially the economic, social and cultural rights of people that requires a large spending on part of the state. Thus, the third world demands got linked to a right to development, a corollary to their demands for a NIEO.

The right to development then, was proclaimed as resolution 34/46 in 1946, which incorporated their demands and stated that, "equality of opportunity for development is a prerogative of nations as of individuals within these nations".

The right to development in this context consists then, of collective as well as individual aspects.

In the latter form it implies a realization of all the rights and thus, a synthesis of all rights. In the collective aspects it represents the right to an equitable share in the economic and social well-being of the world. Thus, it entails that national action by the states be substantiated by the efforts at the international level. This underlines then, the duty of solidarity or the duty to cooperate in achieving development for all. This becomes essential more in the context of developing countries. Therefore, for the guarantee of individual development, the states are responsible, and this duty of solidarity and to be co-responsible to help the states to achieve their human rights standards become the basis for collective and interstate aspect of the right to development. Therefore, it entails the duty of positive assistance by the developed states to the developing ones. But, this is an action that has to be supplemented by a similar one at the national level.

Collective development then promotes individual development and individual development is necessary for community development. Right to development then is meaningful only if it is considered both as an individual and a collective right. Development has to be viewed not only as encompassing economic growth alone but an harmonious interaction of all factors political, economic, social and cultural process.

The right to development expressed in terms of this duty of solidarity and its linkage to human rights has an authoritative legal expression in the texts of various instruments adopted till now not only by the United Nations but other international organisation as well (examples, Article 55 and 56 of the charter). But, these are references that contain a vague ideology of the right and ideology of development. This lacunae was filled up by the entrench of the debate on the right to development by the establishment of a working group of governmental experts to prepare the required instrument with a legal validity.

The UN led to the establishment of a working group on the right to development, whose work spanning a period of five years ultimately led to the adoption of the declaration in 1986. The declaration represents the attempt at an articulation and conceptualization of the right to development, completing the continuous movement of idea for the past four decades. It is indeed an unique and a landmark event in the history of human rights.

Though the declaration represents a growing concern with the demands of the time, like the earlier instruments (NIEO and Charter of Economic Rights) came to be opposed by the major developed states, despite the fact that development concerns in some forms can be traced in the regional instruments of states like USA and European states. Their opposition centered mainly on the collective aspect of the right to

development which according to them would lead to a distortion of human rights agenda and favoured the individual aspects more. Most of them also opposed the link established between development and disarmament, which the developing states was necessary to divert resources to development.

The Declaration, then represents a sort of a compromise text. It delicately balances the positions put forth by all nations portraying indivisibility and interdependence of both sets of rights. It gives a clear recognition to complementarity of action at national and international levels for achievement of the right, but at the same time, recognises developing states as a special category of states in need of assistance.

The adoption of the declaration was followed by various activities towards the implementation of the right. But, these measures have been concentrated mainly on the research and educational activities meant to popularize the concept of right to development.

In Vienna conference this attempt as a compromise text to some extent watered down and led to the evolution of a consensus on it. But, as far as its implementation is concerned it is not yet promulgated despite the efforts towards it. While, the declaration represents a major milestone on the evolution of concern on the right to development, it still needs a lot of effort to be really implemented. Like, the UDHR, the declaration does represent a statement of moral and political authority but lack of reporting and implementation procedures and status of a treaty, it still requires a vigorous attempt towards further progress.

The concerns on right to development thus, are multidimensional embracing the entire international community and entails an explicit and sustained role of the United Nations and the entire international community

to discuss development and human rights as the vital issue of international agenda. These attempts represent an efforts to discuss, codify and implement the right to development encompassing the NIEO and Promotion of Human Rights. The movement of human rights then reflects a change in doctrines from 1945 to the present day. The 1945 western dominated arena of international human rights law favouring civil and political rights, led to incorporation of domestic bills of rights at the international level. The second development is the emergence of the third world to introduce concepts that are related to social justice and dignity of man. The main focus is on human being as the basic entity, achievement of collective rights of peoples, to full realign of all human rights.

BIBLIOGRAPHY

PRIMARY SOURCES

United Nations Documents:

Economic and Social Council, Commission on Human Rights, Session thirty-five, UNDOC/E/CN4/1334/1979, "International Dimensions of the Right to Development as a Human Right in Relation with other Human Rights Based on International Cooperation, Including the Right to Peace, Taking In To Account the Requirements of the New International Economic Order and The Fundamental Human Needs". (A Report by UN Secretary General)

Economic and Social council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Session, Thirty-six, UNDOC/E.CN4/Sub2/1983/24, 2nd August 1983, New International Economic Order and Promotion of Human Rights by Mr Raul Ferrero (Special Rapporteur, Peru).

Economic and Social Council, Commission on Human Rights, Session Thirty-eighth, UNDOC E/CN. 4/1489/1982, 11th February, 1982, Report of the Working Group of Governmental Experts on the Right to Development.

Economic and Social Council, Commission on Human Rights, Session Thirty-ninth, UNDOC E/CN'4. /1983/11, 9th December 1982, Report of the Working Group of Governmental Experts on Right to Development.

Economic and Social Council, Commission on Human Rights, Session Forty-First, UN DOC/E/CN4/1985/11, 24th January 1985, The Report of the Working Group of Government Experts on the Right to Development.

Economic and Social Councils, Commission on Human Rights, Session, Forty-third, UNDOC E/CN.4/1987/10, 29th January 1987, Report of the Working Group of Governmental Experts on the Right to Development.

Economic and Social Council, Commission on Human Rights, Session Forty-Fourth, UNDOC E/CN.4/1988/10, 29th January 1988, Report of the Working Group of Governmental Experts on the Right to Development.

Economic and Social Council, Commission on Human Rights, Session Forty-fifth, UNDOC E/CN.4/1989/10, 13th February, 1989, Report of the Open ended Working Group of Governmental Experts on the Right to Development.

The Vienna Declaration and Programme of Action June, 1993, Published by United Nations Department of Public Informations, N.Y., August 1993.

Economic and Social Council, Commission on Human Rights, Fiftieth session, 13th December, 1993, "Question of the Realization of the Right to Development". Report of the Working Group on the Right to Development on its First Session.

Economic and Social Council, Commission on Human Rights, Fifty-second session, UNOC E/CN.4/1996/24, 20th November 1995, "Question of the Realization of the Right to Development". Report of the Working Group on the Right to Development on its Fifth Session.

General Assembly official Records, Session Forty-First, Annexes, Document A/41/925, Agenda item 101, "Alternative Approaches and ways a Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms", Third Committee Report, 1986/1987.

General Assembly Official Records, Session Twenty-nine, 1974, UN DOC A/PV.2315/ and Corr. 1.

General Assembly Official Records, Session Thirty-two, 1977, UNDOC A/32/ P.. 105.

General Assembly Official Records, Session Thirty-Four, 1979, UNDOC A/34/PV.76.

General Assembly Official Records, Session Thirty-six, 1981, UNDOC A/36/ PV.97.

General Assembly Official Records, Session, Forty-one, UNDOC A/41/PV. 97.

United Nations Year Books; Department of Public Information, N.Y.

VOLUME 35, 1981

VOLUME 36, 1982

VOLUME 37, 1983

VOLUME 38, 1984

VOLUME 39, 1985

VOLUME 40, 1986

Resolutions and Decisions adopted by the General Assembly during its thirty-fourth session, 18th September, 1979 to 7th January 1980, Department of Public Information, N.Y. Press Release, GA/6161, 7th January, 1980.

Resolutions and Decisions adopted by the General Assembly during the First Part of its Thirty-sixth Session from 15th September to 18th December 1981, United Nations Department of Public Information, N.Y., Press Release, GA/6546, 4th January, 1982.

SECONDARY SOURCES

BOOKS

Alston, Philip and Steiner, Henry J., ed., International Human Rights in Context: Law, Politics, Morals (Texts and Material) (Oxford: Clarendon Press, 1996).

Anand, R.P., Cooperation or confrontation: International Law and the Developing Countries, (New Delhi: Banyan Publications, 1984)

Baxi, Upendra, Mambrino's Helmet?: Human Rights for a Changing World (New Delhi: Har Anand Publication, 1994).

Bhalla, S.L., Human Rights (Delhi: Docta Shelf, 1991).

Cambell, Tom and Gold, David, and others, ed., Human Rights: From Rhetoric to Reality (UK: Basil Blackwell, 1986).

- Cassese, Antonio, International Law in a Divided World (Oxford: Clarendon Press, 1986).
- Chandra, Satish, International Documents on Human Rights (New Delhi: Mittal Publications, 1990).
- Cranston, Maurice, What are Human Rights (London: The Bodley Head, 1973).
- Crawford, James, ed. Rights of Peoples (Oxford: Clarendon Press: 1988).
- Davidson, Scott, Human Rights (Buckingham, Open University Press, 1993).
- Donnelly, Jack, The Concept of Human Rights (London: Croom and Helm, 1985).
- Eide, Asbjørn, Eide Wenchbarth and Others, ed., Food as a Human Right (Japan: United Nations University, 1984).
- Evans, Tony, ed., Human Right: Fifty Years on: A Reappraisal (Manchester, Manchester University Press, 1998).
- Falk, Richard, Human Rights and State Sovereignty (London: Holmes and Meicer, 1981).
- Forsythe, David, P., Human Rights and World Policies (London: University of Nebraska Press, 1983).
- Freedon, Michael, Rights (Milton Keynes: Open University Press, 1991).
- Green, J.F., United Nations, and Human Rights (Washington, D.C., : The Brookings Institution, 1956).
- Henkin, Louis, The Rights of Man Today (Boulder: West View Press, 1978).
- Humphrey, John. P. Human Rights and the United Nations: A Great Adventure (Dobbs Ferry, N.Y.: Transnational Publishers Inc, 1984).

International Commission of Jurists, ed. "Development, Human Rights and the Rules of Law", (Hague Conference 27th April- 1 May, 1981) (Oxford, Pergamon Press, 1981).

Jones, Peter, Rights: Issues in Political Theory (London: Mcmillan, 1994).

Joyce, J.A., The New Politics of Human Rights (London: Mcmillan Press, 1978).

Lawson, Edward, Encyclopedia of Human Rights (London: Taylor and Francis, 1991).

Lillich, Richard. B., and Hannum Hurst, ed., International Human Rights: Problems of Law, Policy and Practice (Boston, Little Brown and Co., 1995).

Macfarlane, L.J., The Theory and Practice of Human Rights (London: Maurice Temple Smith Ltd., 1985).

Moskowitz, Moses, International Concerns with Human Rights (New York, N.Y.: Oceana Publications, 1976).

Ramcharan, B.G., ed., Thirty Years After the Universal Declaration (The Hague: Martinus Nijhoff, 1979).

Rawls, John, A Theory of Justice (Oxford: Oxford University Press, 1971).

Robertson, A.H., Human Rights and the World (Manchester: Manchester University Press, 1972).

Saksena, K.P., ed., Human Rights: Perspectives and Challenges in 1990 and Beyond (New Delhi: Lancer Books, 1994).

Sen Sankar, Human Rights in Developing Society (New Delhi: APH Publishers, 1998).

Shepard, George and Nanda, V.P., ed., Human Rights and Third World Development (London: Greenwood Press, 1985).

Sieghart, Paul, International Law of Human Rights (Oxford: Clarendon Press, 1983).

“United Nations and Human Rights” (United Nations) (New York: Department of Public Information, 1984).

Vasak, Karel, ed., The International Dimensions of Human Rights (Westport: Greenwood Press, 1982).

Vijapur, A.P., United Nations at Fifty: Studies in Human Rights (New Delhi: South Asian Publis -hers, 1996).

_____, Essays on International Human Rights (New Delhi: South Asian Publishers, 1991).

Vincent, R.J., Human Rights and International Relations (Cambridge, Cambridge University Press, 1986).

Waldron, Jeremy, Theories of Rights (Oxford, Oxfoed University Press, 1984).

Weeramantry, C.G., Justice without Frontiers: Furthering Human Rights (The Hague: Kluwer Law International, 1977).

_____, An Invitation to the Law (Perth: Butterworths, 1982).

ARTICLES IN PERIODICALS

Alston, Philip, “Conjuring New Human Rights: A Proposals for Quality Control, American Journal of International law (New York, N.Y.), Vol. 78, no. 3, July 1984, pp.607-621.

-----“The Shortcomings of ‘Garfield the cat’: Approach to Right to Development”, California Western International Law Journal (California), Vol. 15, No. 3, Summer, 1985, pp.510-518.

Blischenko, I.P., “The Impact of New International Economic Order on Human Rights in Developing Countries”, Bulletin of Peace Proposals (oslo), Vol.11, 1980, pp. 375-386.

Boven, T.C., “Human Rights and the New International Economic Order”, Bulleting of Peace Proposals (Oslo), Vol. 11, 1980, pp. 369-373.

Donnelly, Jack, "In Search of the Unicorn: The Jurisprudence and Politics of Right to Development", California Western International Law Journal (California), Vol. 15, No. 3, Summer 1985, pp 473-509.

Gross, Espiell, H., "The Right to Development as a Human Right", Texas International Law Journal (Texas), Vol. 16, No. 2, Spring 1981, pp: 189-205.

International Legal Materials (Washington, D.C.), Vol XIII, Part I, 1974, pp. 715-766.

Kothari, Rajni, "Human Rights as North-South Issues", Bulletin of Peace Proposals (Oslo), Vol. 11, 1980, pp. 331-338.

Marks, Stephen, "Development and Human Rights", Bulletin of Peace Proposals (Oslo), Vol. 8, No. 3, 1977, pp. 236-246.

_____, "Emerging Human Rights: A New Generation for the 1980's" Rutgers Law Review, (New Jersey) ,Vol. 33, No.2, Winter 1981, pp. 435-452.

Nanda, V.P, "Development as an Emerging Human Right Under International Law", Denver Journal of International Law and Policy (Denver), Vol. 13, No. 2-3 Winter 1985, pp. 161-179.

Rich, Roland, "The Right to Development as an emerging Human Right", Virginia Journal of International Law (Virginia), Vol. 23, No.2, Winter 1983, pp. 287-328.

Saksena, K.P., "Human Rights and the Right to Development", International studies, (New Delhi), Vol. 28, No.1, 1991 pp. 41-53.

Sohn, Louis, B., "The Universal Declaration of Human Rights: A Common Standard of Achievement? The Status of the Universal Declaration in International Law, Journal of International of Jurists Review (Geneva), Vol. 8, No. 2, December, 1967 pp. 17-26.

Tyagi, Yogesh, Third World Response to Human Right, "Indian Journal of International Law (New Delhi), Vol. 21, 1981, pp. 119-140.