

**INTERPLAY OF HUMAN RIGHTS AND
DEVELOPMENT:
THE IMPLEMENTATION AND
GUARANTEE OF DEVELOPMENT AFTER
THE VICTORY OF THE WORLD WAR II**

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Poverty is an outcome the 'deprivation of liberty to earn, own and use resources; obliteration of the freedom to contract and right to 'identity-the autonomy' of individual. Human rights campaign for people would have no meaning at all if does not 'emphasize the need of 'Right' to have rights'.

Amina was born deaf, and grew as dumb girl. Her father was killed in Malaysia war, a communist insurgency in which her father served as a 'soldier for British Army'. She grew up in poverty and had no opportunity to be educated. She was 17 year old when one her cousins raped. She became pregnant but kept hiding. Her mother was afraid of making the issue public as she would be put on wrath of offender's family subsequently. The pregnancy was kept unnoticed and the infant was killed after secret birth. The dead infant was unearthed by stray dogs and enquiries began and Amina was exposed. The hell in life thus began. She was arrested along with her mother. She was found guilty of killing her infant baby. Finally she died of tuberculosis in the prison. When the information of her death reached to the village, most people felt relieved as she now should not face trouble of life. Death is decent than poverty.

Let us examine the 'depth of the deprivation' that Amina had through. She was born with disability of sound and speech. Her mother had gone through a serious typhoid when Amina was being carried on womb. The poverty Amina's mother had to go through was desperate and excruciating. As a result Amina was born with unbearable consequences of parents' deprivation and destituteness. The deficiencies in life preceded before her birth as a result of 'deprivation her mother had to go through'. These deficiencies could not be overcome. She grew all along with her disabilities and was deprived of every opportunity necessary for the decent growth. She was deprived of opportunity for education and thus remained illiterate and ignorant, she, as a disable girl child, suffered from all forms of contempt of the society; she was subjected to all forms of violence, including rape, and subsequent trauma and agony; she was then raped by the system of justice and finally crushed by the diseases imposed by the 'circumstance' of want, filthiness and inhuman system of prison. This is what 'metaphorically' called poverty.

1.1. POVERTY, A METAPHOR OF LIFE EPITOMIZED BY HUNGER, IMPOVERISHMENT, DECIMATION, DESPONDENCY, AND INJUSTICE:

Converse to the ideas and opinions advocated by the western human rights intelligentsia, the state of poverty is an outcome of human rights violation which generally manifests in deprivation of individual capacity, denial of access and opportunity to resources, and social exclusion with stigma. Most religions have also described poverty wrongly. The Hindu religion 'defined it as an outcome of past deed of human life (Karma), whereas Buddhism believed 'so -called wealth' is nothing but a kind of greed. Christianity took it as 'matter of destiny of individual'. Most societies, in the past, described the state of poverty as an outcome of 'idleness' or 'lacking of wisdom in individuals'. It was taken as a matter of misery 'calling for charity of person'. It was considered an 'immutable fate of individuals', and the only option left was to survive with it. However, the perception about poverty in vector of life has been changed with the advent of the 'new theories of economics and systems of governance'. Pragmatically speaking, poverty is a state opposite to development, which implies a state of 'progressive changes in the given vector of life characterised by attributes of enhanced capacity of individuals to productivity, adequate and unhindered access to resources and opportunities economic growth and social transformation, and guarantee to dignified living standard. The type of development is a 'milestone of human rights'. Protection of human rights thus signifies an existence of a 'state of removal of poverty'. The state of development of obviously means a state of 'enhanced living standard'.

The term ‘poverty’ is ordinarily used to signify a ‘state in human life that is subjected to a circumstance of want or suffering from hunger and deprivation. Generally, a circumstance symbolizing a life without essential items such as food, clothing, water and shelter needed for proper living’ is ascribed to poverty. This was exactly the looming compassion the UN’s World Summit on ‘*Social Development Declaration at Copenhagen*’ in 1995, was concerned with when it defined poverty. It stated, “*Poverty is a condition characterized by sever deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information*’.² Some people have suggested that poverty is a matter of ‘lack of money’.³ The World Bank in 2000 came out with a definition of poverty ‘as a pronounced deprivation in well-being’.⁴ However, the term ‘well-being’ is susceptible of being defined differently in different settings. The term welcomes ‘relativism’ in treatment. The ‘standard of well-being’ may be quite different in USA than in Nepal. In Nepal, in 1990s, for instance, to have a post-paid mobile telephone used to be considered as a ‘sign of well-being’. The concept of well-being has ‘external value’ rather than internal one. Obviously, the term well-being was taken differently by different institutions, countries and academics. Some grasped it ‘as the command over commodities in general’ and concluded that the people having greater command over commodities were considered well-off’.⁵ This is seemingly a conventional approach of perceiving poverty which ‘underlies lack of money as the decisive factor of the poverty’.⁶ This approach imports deceptively, rather say disguisedly, the Benthamite notion of happiness based on theory of utilitarianism,—the theory of happiness caused by access to ‘means of happiness’. Some other people have seen ‘well-being’ in the sense of ‘ability to obtain specific type of consumption goods’⁷—for instance, food, shelter or education. This approach also derives insights of ‘well-being’ from the notion of consumerist perspective. Amartya Sen’s approach is the broadest one. In his view, ‘well-being’ comes from a capability to function in society’. As a matter of fact, for him the poverty occurs ‘when people lack key capabilities and so has inadequate income or education, or poor health, or insecurity, or low-self confidence, or a sense of powerlessness or the absence of rights such as freedom of speech’.⁸

The ‘capability theory’ makes attempt to see poverty into its ‘insights or underlying causes’. It gives a sense that ‘poverty is an effect rather than causes’, and thus calls, though implicitly, to identify ‘elements that are functioning as causes or factors from which ‘the concept usually notated as poverty’

2. See Copenhagen Declaration , Annex II, Section 19 . The Declaration added that ‘poverty depends not only one income but also on access to social services’. Most international organizations have taken same approach to define poverty. The World Bank, for instance, in 2011, in one of its report called ‘measuring inequality’ defines poverty as follows: “Absolute poverty or destitution refers to the state of severe deprivation of basic human needs, which commonly include food, water, sanitation, clothing, healthcare, education and information’. The report categorizes poverty as absolute and relative poverty, the latter referring to a state ‘contextually as economic inequality in the location or society in which people live’ (<http://web.worldbank.org/WEBSITE/EXTERNAL/TOPICS>). The one more approach to determine poverty is known as ‘income and consumption determination’ method. In this method, the researchers have to determine ‘the per-capita income and per-capita consumption amounts.’ See for fuller accounts; Geoffrey Gilbert, *World Poverty*, Santa Barbara: ABC-CLIO, 2004 and Sanjay G. Reddy, *How not to Count Poor*, Columbia University, 2005. The difference is then used to ‘determine the level of poverty’. This method proceeds by quantifying the ‘poverty statuses’. In all these methods, the ‘*de facto*’ situation which is ‘a cumulative effect of various factors’ is seen as ‘a poverty’. All these ‘definitions and methods take ‘poverty’ as a tangible substance or object, thus making attempt to identifying its underlying characters or attributes.

3. For instance, Jonathan Haughton and Shahidur R. Khandker (*Handbook on Poverty and Inequality*, The World Bank; 2009, Washington D.C.) argued ‘poverty is the deprivation of food, shelter, money and clothing that occurs when people cannot satisfy their basic needs’.

4. World Bank, 2000. *World Development Report 2000/2001: Attacking Poverty*. Washington, DC: World Bank.

5. See; (n3) at 2.

6. (n3)

7. Ibid.

8. Amartya Sen, ‘*Commodities and Capabilitie*’s. 1987, Amsterdam: North-Holland.

springs out. It gives an ample space to ponder philosophically that ‘the term poverty is nothing but a ‘shallow understanding of the reality’. The poverty ‘to understand in its essence—underlying constituent factors—is neither a ‘concept nor substance’, it is rather a metaphor. From Sen’s theory of capability, poverty can be considered ‘a sum or totality’ of conditions resulting due to ‘lack of capabilities’ occurred in the life of people.

As early as 1998, United Nations brought a definition of poverty through a statement signed by all UN agencies. It said⁹:

“Fundamentally, poverty is a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and clothe a family, not having a school or clinic to go to, not having the land on which to grow one’s food or a job to earn one’s living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation”

The focus of this definition has rested somehow on ‘the constituent elements’ as it implicitly indicates to a condition of human person—the poverty—that has been resulted out of acts of ‘dispossession of capacities’ that are embodied in the legally created rights of human individuals. Most important insight this definition refers to is the ‘dignity with economic well off’ of human beings. The state of poverty indeed impairs the ‘human dignity’, which constitutes the core essence of all concepts such as human rights, rule of law and democracy. The interaction between individual and society is equally important aspect of ‘dignified human life’. Two core elements—violation of human dignity and deprivation of basic capacity to participate in societal interactions—are those factors which result in all other forms of lacking or want and they, together with two core elements, constitute a state which is known by the metaphor of ‘poverty’.

Keeping this philosophical underpinning in mind, it can be argued that ‘development’ is a process of ‘brining about change in the quality of life by effecting changes in the given vector of life’. So the ‘concept of development underpins intelligible stages or degrees of changes’ which may either result (a) in desired reforms or improvement in the current vector of life, or (b) in transformation of the current vector of life from worse one to better off situation. To consider from this ‘theoretical notion’, the state of poverty can be described as a state of ‘deprivation or decimation of potentials’ for adapting to new changes.

1.2. FAILURE OF THE WORLD ORDER TO ADDRESS THE PROBLEM OF POVERTY BY ADDRESSING THE PROBLEM OF HUMAN RIGHTS

The post World War II era was crucial from 'building a justice-based world order'. However, in the most part of the world, though the colonialism largely did away with, the independence achieved by the people failed to bring about the changes in the life standard of the people. The millions of people from the past colonial regime continued to live in a state of economic misery and social exclusion. The poverty exposed common people to an utterly acute state of insecurity of life, the threat to the right to life being the most glaring one—every year even after the World War II over 18 million people continue to die across the world pre-maturely, which constitutes one third of all human deaths.

⁹. *Indicators of Poverty and Hungers*, United Nations, 1998. Signed by all UN Agencies

Statistics show that every day fifty thousand people die due to poverty, of which thirty four thousand are children below five.¹⁰ The situation has thus witnessed no change at all. Since the end of the cold war era, the volume of deaths from starvation and preventable diseases amount to approximately 250 million, most of them being the children.¹¹ The global poverty refuses to decline and global inequality continues to increase, more than doubling since 1960.¹² Seemingly, the state of poverty and deprivation represents a state of the 'gross violation of human rights'. The international community has abjectly failed to bring about changes in such a 'grotesque situation' of human security. By contrast, some intellectuals love to put arguments that 'the duty of international community to help poverty-stricken societies is not absolute because they are not responsible to this poverty'.¹³

The role of international organizations like International Monetary Fund (IMF) and the World Bank (WB) is hardly appreciable in this regard. Conversely, the rent seeking attitude they have grossly enhanced over the past is one of the 'causes contributing for prolonging the deplorable state of poverty in the developing countries'.¹⁴ Most erroneous is the 'system of measuring the poverty across the world—i.e. the standard of daily earning of \$1.25. Considering a person having daily earning of \$1.26 is nothing but a myth. There is no difference between persons having daily earning of \$ 1.26 and \$1.26. The developed countries and international organizations controlled by them hardly bothered with the 'urgency of prioritizing the utilization of resources for 'generating threshold ability' of development of the vast poor population of the world, and thus working for rescuing the lives of millions living in a state acute vulnerability of human security and dignity'. The human development in this context is a 'basic or prerequisite instrument of adequate human security' leading to a perfect and well secured human dignity. The 'threshold condition' of human rights empowers people's ability to assert rights to development, and the development, in turn, establishes a 'circumstance enabling people to enjoy full-fledged protection of civil and political participation along with freedoms of conscience and decision making'. The implementation and guarantee of development rights is therefore poor even today, especially in the developing countries.

1.3. INTERPLAY OF LAW AND DEVELOPMENT

Attaining a state of human security and dignity, i.e. the protection of human rights of individuals, demands a pragmatic but irreversible 'interplay between law and scientific economic development accompanied by social transformation'.¹⁵ Every society is comprised of individuals, groups and the State. The interactions between these variables of society collectively determine social goals of that

¹⁰ . See, Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reform*; Cambridge: Polity 2002, p. 2

¹¹ . Ibid at 98

¹² . Id at 99-100

¹³ . See, Thom Brooks, "Is Global Poverty a Crime", p. 2. Available online at <http://ssrn.org/abstract>, last visited October 29, 2011.

¹⁴ . For detail information, See Joseph Stiglitz , *The Price of Inequality*, 2012.

¹⁵ . The theory of demanding role of law in the larger context of social, economic and political development is not new one in jurisprudence. During 1960s and 1970s, two law and development scholars, David M. Trubeck and Thomas M. Franck, described this approach as "liberal legalism". On law and development movement generally, see: Benny Simon Tabalujan, 2001. *Legal Development in Developing Countries-The Role of Legal Culture*; SSRN. The key proposition of the approach is that the State should apply law equally to all persons in an independent and rational manner. Implicit in this approach is the belief that legal development is a necessary pre-requisite of economic development and that modern laws from developed countries can be imported as "legal transplants" into developing countries to fulfill the requirements. On "legal transplants" generally, See: William Ewald, *Comparative Jurisprudence II: The Logic of Legal Transplants*; 43 *AM.J.Comp. L.* 489 (1995)

given society.¹⁶ Societies in developing countries are, however, utterly marred by penchants of traditionalism or conventions indiscreetly permitting 'disparity in treatment or advantages between individuals, individual and group and group and group in the one side, and the State on the other'. The disparity is often backed by deeply rooted 'hierarchical structure of the given society'. The hierarchical structure, on the other hand, requires 'regressive status quo' for its continuity. The change in the circumstance is necessary for positive transformation of the lives of people, which is attained by 'empowering people through generating 'threshold ability' in them to assert rights concerning their security of person, physical integrity, subsistence means, acquiring knowledge and skills for development and, for all these, the participation. The threshold ability, to make it functional and yielding fruits, requires soundly grounded legal culture. But how the society can develop the legal culture 'amidst rigorous tendency of preserving the status quo is an unanswered question yet. Some western jurists have proposed an easy approach: the developing countries can import laws from the developed countries.¹⁷ Legal transplantation, however, is not as easy as described by them.¹⁸ Laws reflect the mood of the people. Historically, they are developed to deal with specific problems faced by the given society. The laws of a society are meticulously designed by wider interactions between individual, groups and the State to formulate the goals of their society, and such interactions provide 'contents to the law'.¹⁹ A society failing to set the goals corresponding to demands created by the change in that society falls in traps of 'regressive status quo'. Socio-political movement for equity-based change backed by economic entrepreneurship is thus a prologue for development of a legal culture in a developing society. The development of legal culture requires the following three pre-requisites to fulfil: (a) emergence of an indigenous intelligentsia of law which can underscore the importance of interactions between the social facts and emerging needs of human development; (b) formulation or determination of economic and socio-political goals on which the structure of the State has to be erected on; and (c) establishment or reforms of institutions to play role in planning laws giving reflections on emerging needs of human development and economic and socio-political goals determined by the society.

The modernization of governance system is a key element to facilitate the economic, social and political development, and to protect human rights. The legal development has to correspond to the economic, social and political development of a given society. The relationship between legal development and

¹⁶. Society and State do have no innate goal of their own. The society and State represent 'collective goal of the people' as State's goal.

¹⁷. Alan Watson figures one of the prominent advocates of 'legal transplants. For him legal transplant has been a common phenomenon through the history and was the most fertile source of legal development. See, Alan Watson, 1993. *Legal Transplants: An Approach to Comparative Law (2nd edition)* p. 95.

¹⁸. The legal transplant movement which gained momentum during 1960s and 1970s through flurry of law modernization programs in Latin America, Africa and, to some extent, Asia lost its vitality in 1980s. The law modernization programs did not fare well as they were expected to do. With failures of these programs, the movement got put into low-profile. According to Patrick McAuslan, the movement lost momentum partly because its main emphasis was on structural and substantive law issue and it failed to determine the nature of relationship, causal or otherwise, between law and development more generally. See: Patrick McAuslan, *Law, Governance and the Development in the Market: Practical Problems and Possible Solutions in GOOD GOVERNMENT AND LAW: LEGAL AND INSTITUTIONAL REFORM IN DEVELOPING COUNTRIES*.

¹⁹. The legal transplant theory was rejected as early 19th century by German scholar Friedrich Carl von Savigny. He believed that a nation had organic unity- over arching the individuals who constituted it and that nation's laws developed through a gradual embodiment of social norms within that community. (On Savigny's organic theory of law, see: *Of the Vocation of Our Age for Legislation and Jurisprudence*, Translated by Abhram Wayward, Littlewood & Co. 1831, Ch II). In recent times many jurists rejected the theory on several grounds. Robert Seidman, for instance, who coined the term "The Law of non-transferability of Law" argued that transference of rules from one culture to another would not work because a rule cannot be expected to induce same sort of role-performance as it did in the place of origin'. See, Robert B. Seidman, *Administrative law and Legitimacy in Anglophonic Africa- A Problem in Reception of Foreign Laws*; 5 Law & Soc'y. Rev. 161, 200-1 (1970)

other broader issues of economic, social and political development is imperative for protection of human rights in any society. Emerging issues of economic, social and political development push for rationalization of laws, and the newly adopted laws do ensure the 'equity of all people in benefits or advantages of the economic, social and political development'. The laws of a society have to embody human security and dignity is an issue 'of the development of legal culture' as well as human rights as morality.²⁰ Human security and dignity as a matter of development is thus a matter of law as well as emerging social morality. In 1990s, for instance, Nepal suffered immensely by World Bank and Asian Development Bank drive for transplantation of laws in Nepal. In the name of privatization and open market economy, a number of laws were brought in Nepal as a part of the project. Nepal's development project deviated as it hijacked the process of people's participation.

1.4. PROTECTION AND PROMOTION OF ECONOMIC, SOCIAL AND DEVELOPMENT RIGHTS:

Poverty and deprivation are forms of latent violence and hence pose threat to human dignity.²¹ Economic, social and political development is hence a fundamental issue of human rights. The generation theory propagated by some western human rights academics has adversely affected the process of 'universalization and internalization' of the international convention on Economic, Social and Cultural Rights, thus posing a serious setbacks to the lives of millions of people across the world.

The international politics, the politics of developed countries in particular, on human rights has contributed to the prolongation of the state of acute poverty in many parts of the world today. The developed countries have persistently denied recognizing the 'universal enforcement of and justiciability' of economic, social and cultural rights'. The 'programmatic nature of economic and social is rights' is not a sole justification for placing them in the peripheral status. Europe would not have to encounter problem of enforcement of such rights if the resource constraint was the only *raison d'être* for giving same status to these rights corresponding to civil and political rights.²² The developed countries

²⁰. Michale J. Perry, the Robert W. Woodruff Professor of Emory University School of Law, says: " Law of human rights is one thing, the morality of human rights, another. By the morality of human rights, I mean the morality that, according to the International Bill of Human Rights, is principal ground—the principal warrant for —the law of human rights." See on: "Human Rights as Law, Human Rights as Morality; Emory University School of Law, Public Law & Legal Theory Research Paper Series, Research paper No. 08-45; p. 12 (This article can be downloaded from <http://ssrn.com/abstract=1274728>

²¹. To quote Dietrich Bonhoeffer is worthy at this point. In Germany during the World War II, he observed that "we have for once learned to see the greatest events of the world history from below, from perspective of outcast, the suspects, the maltreated, the powerless, the oppressed, the reviled—in short, from perspective of those who suffer" . See, Dietrich Bonhoeffer, 1995, *A Letter to Family and Conspirators in Geoffrey B. Kelly and F. Burton Selson, eds. Dietrich Bonhoeffer A testament of Freedom; Harper SanFrancisco, pp.482-486*. Martin Luther King Jr. declared, in the same spirit, that man's inhumanity to man is not only perpetrated by vitriolic actions of those who are bad. It is also perpetrated by vitiating inactions of those who are good. Quoted in Nicholas D. Kristof "The American Witness", New York Time, March 2, 2005.

²². The history has witnessed a biased attitude to economic and social rights from very early time of efforts for drafting International Bill of Human Rights. The European Social Charter (ECS), for instance, was adopted by the Council of Europe in 1961, a decade after European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in 1950. When the ECS was adopted, it was envisioned to provide the backbone and framework for the protection of fundamental economic and social rights in Europe. In the spirit of recognizing the indivisibility between civil and political rights and economic and social, the drafters of the ESC viewed it as the necessary counterpart to the rights protected under European Convention for the Protection of Human Rights and Fundamental Freedoms. In practice, however, ESC has been marginalized in the protection of economic and social rights, has failed to elevate its status equal footing with European Convention for Human Rights. See, Melissa Khemani, 2009, "Economic and Social Rights"; Georgetown Law Centre ; Electronic copy available at <http://ssrn.com/abstract=1606110>

indeed have meticulously ignored the significance of economic and social rights.²³ Making ESDR as non-justiciable is one of the major faultiness seen in this regard. This has mainly been caused by the developed countries, and the developing countries have followed the same notion in order to skip their accountability of addressing looming poverty and deprivation in their jurisdictions. Countries like UK and USA still continue to question the value of a complaint and adjudication procedure for many aspects of economic and social rights on the basis of alleged 'vagueness' of those rights and the inappropriateness of interference with governments' decision about economic and social policy.²⁴ While this trend is now rejected by courts of many countries²⁵ and regional bodies, including the African of Human Rights,²⁶ the Inter-American Commission of Human Rights,²⁷ the Inter-American Court of Human Rights,²⁸ the European Committee of Social Rights,²⁹ the European Court of Human Rights,³⁰ the recognition and protection of economic and social rights still suffers badly. The denial of nations to give equal status to economic and social rights implicitly suggest a negative attitude of politicians and government bodies to account for grotesque state of poverty crushing the lives of millions of people. This non-empathetic attitude of developed governments is reflective also from the recent discussions at the United Nations about an optional protocol to establish a complaints mechanism to the International Covenant on Economic, Social and Cultural Rights. Though a Working Group established to consider the optional protocol heard from a number of experts and suggested that economic and social rights now must be justiciable,³¹ the issue is not yet resolved. Developed powerful countries such as USA, UK, Canada and Australia are less favourable to the idea of optional protocol. The draft of the protocol prepared by the Working Group is altered by such countries to ensure 'limitations on the scope and application' of a complaint procedure.³² The rejection of the

²³ . Philip Alston has accurately described the position. He says, "ESC turned out to be the 'poor little step sister' of the ECHR". See, Philip Alston, 2005, *Assessing the Strengths and Weaknesses of the European Charter's Supervisory System*, Center for Human Rights and Global Justice, Working Paper, Economic, Social and Cultural Rights Series (NYU School of Law, No. 6 2005), 2-5.

²⁴ . Aoife Nolan, et al. 2007, "The Justiciability of Social and Economic Rights: An Updated Appraisal", Human Rights Center, Queen's University Belfast; Electronic copy available at <http://ssrn.com/abstract=1434944>

²⁵ . Jurisdictions accepting justiciability of economic and social rights include, *inter alia*, South Africa, The Philippines, India, Bangladesh, Colombia, Finland, Kenya, Hungary, Switzerland, Argentina.

²⁶ . See, e.g. *Purohit and Moor v. Gambia*, Communication 241/200. Decided at 33rd ordinary Session of the African Commission, 15-29 May 2003 (dealing with the right to health of mental health patients); *SERAC and CESR v. Nigeria*, African Commission on Human Rights, Case No. 155/96, Decision made at 30th ordinary Session, Banjul, The Gambia, from 13th -27th October 2001 (dealing with the right to health and implied rights to food and housing).

²⁷ . See, e.g., *Argentina: Jehovah's Witness, Case 2137*, Inter-AM. C.H.R. 43, OEA/ser. L/V/II.47, doc 13 rev. 1 (1979) (Annual Report 1978) (dealing with the right to education); *Jorge Odir Miranda et al. v. El Salvador*, Inter-American Commission on Human Rights, Case 12.249, Report No. 29/01, OEA/Ser. L/V/II.111 Doc. 20 rev. at 284 (2000) (admissibility decision dealing with economic, social and cultural standards enshrined in OAS Charter).

²⁸ . See, e.g., *Cumindad Mayagna (Sumo) AwasTingni v. Nicaragua*, Inter-American Court of Human Rights Series C, No. 79, 31 August 2001 (involving the right to property); *Delcia Yean and VioletaBosica v. Dominican Republic*, Inter-American Commission on Human Rights, Report 28/01, Case 12. 189, 7 December, 2005 (involving the rights of child).

²⁹ . *Autisme-Europe v. France*, Complaint No. 13/2002, 7 Nov. 2003, (dealing with the education rights of persons with autism); *FIDH v. France*, Complaint No. 14/2003, 8 Sept, 2004 (involving, *inter alia*, the right to medical assistance of non-nationals).

³⁰ . For a list of decisions of regional bodies on economic and social rights: see, A. Nolan et al., 'Leading cases on Economic, Social and Cultural Rights: Summaries- Working Paper No. 2' (Geneva; COHRE, 2005), electronic copy available at www.cohre.org

³¹ . For additional information on progress in this regard; see, Report from the First Session of the Open Ended Working Group to consider options for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2004) E/CN.4/2004/44; Report of the Second Session, 2005. E/CN.4/2005/52.

³² . See, the Human Rights Council's Resolution 2006/3, para 2(Available at http://www.ohchr.org/english/issues/escr/docs/res2006_3.pdf). Canada for, for instance, explained after the vote that it "continued to question the merits of a communications procedure for economic, social and cultural rights, and was concerned for the potential of undue interference by international body, and the absence of a clear definition for many economic, social and cultural rights as well as for clear criteria for judging compliance (UN Press Release, 'Action on Resolution on Working group on Optional protocol to the International Covenant on Economic, Social

comprehensive complaints procedure implies that the developed countries across the world are not yet ready to 'ponder that the deaths occurred due to hunger, lack of medicines and shelters, is the most pressing issue of human rights.

1.5 UN Efforts to Institutionalize the Right to Development and Politics

The economic and social wellbeing of people is a major agenda of economic, social and political development, as it is so pointed out by the UN Declaration of the Rights on Development. This initiative specifically highlighted the importance of economic development and social justice as the bed rock of peace and sustainable human rights protection. Bolivia had added a proposal demanding that the Economic and Social Council of the United Nations be mandated:

“to achieve concerted action to promote the economic development, the industrialization, and the raising of the standard of living of less favored nations as well as the protection of the international rights of men, the perfecting of social security and the provision of the material opportunities for work, the solution of problems of health and population and others of a similar nature”.³³ This proposal sounded quite ambitious, but for many States it was not enough. Some countries went further to put proposal in this regard. Argentina, for instance, insisted for equal access to capital goods,³⁴ and France argued for fair distributions of raw materials as part of the Economic and Social Council’s mandate.³⁵ These proposals were however rejected in San Francisco Conference, and in their place Article 55 of the Charter was devised. The San Francisco Conference failed to properly address the necessity of emphasizing the ‘economic development and social security of people across the world’. Article 55 and 56 emerged to be the only 'instruments' in the Charter to directly deal with the role of the UN as whole in economic and social development of the world population. The post Second World era was thus not very promising for the sake of poor population of the world. The major reason behind this limited attention of the UN to the economic and social development was that the founders of the United Nations at San Francisco conference were the most influential countries and most of them had economies already developed well. The matter of economic development thus could not be an issue of priority of debate for them. They were thus virtually guided by a misconception that what they were making the UN was ‘an institution for collective security’ but not an institution which could take responsibility for the economic development and social security of the poor people of the world.³⁶

and Cultural Rights', 29 June 2006). After new mandate to the Working Group, the first meeting the group was held on 7 July, 2007. In this meeting, the support for the comprehensive complaints procedure was seen comparatively stronger. However, a significant number of nations, through their delegations, continued to argue in favor of a provision allowing for an 'ala carte' choice by states upon ratification as to which rights or aspects of rights the complaint procedure would cover. The US delegation argued that ICESCR, unlike the ICCPR, does not require states to provide legal remedies. In contrast, NGOs and states who favoured the comprehensive optional protocol stressed that all social and economic rights, and all components of these rights, are subject to a requirement of effective remedies. The stand taken powerful countries was a serious backward step in terms of effective protection of International human rights.

³³ . UNCIO, vol.3, at 586.

³⁴ . Ibid, vol.10 at 84.

³⁵ . Ibid, vol.3, at 388.

³⁶ . Much of the world was still colonized. Western colonial States were not sincere to the people of the colonized world. They did not treat the people of the colonized parts as ‘equal to that of developed countries’. The sorrow and problems faced by the people of colonized countries were not taken as violation of human rights as such people were not defined as ‘civilized people’. See for detail discourse, Schirijver, van Genugten, Homan, de Waart, 2006, *The United Nations of the Future: Globalization with a Human Face*. Amsterdam: KIT Publishers, at 89.

Most importantly, the United States of America was very much opposed to any language about social/economic rights from the very beginning, seeing it as an opening for socialism.³⁷

1.6 UN DECLARATION ON RIGHT TO DEVELOPMENT AND MILLENNIUM DEVELOPMENT GOALS:

Nonetheless, some developments have followed recently in this regard. It seems that the realization that deprivation is a grave violation of human rights is increasing. The UN Declaration on the Right to Development is the most visible example of this development. More recently, the Millennium Declaration (2000) was unanimously adopted by the UN through a largest-ever gathering of world leaders (189 member-states, most of them represented by heads of State and Government).³⁸ In the declaration, they pledged to effectively work to free fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected to. It included a promise to make the right to development a reality for everyone and to liberate the entire human race from want.³⁹

The Millennium Development Goals are the concrete targets accompanying this general pledge.⁴⁰ While the language of human rights could be specifically used,⁴¹ it could be assumed that human rights and development are closely linked and thus MDGs are not fully dry of human rights notions. However, to approach development from the perspective of legally binding human rights is not an approach accepted by it. Unfortunately enough, two years after the declaration of the MDGs, the US Government made a very controversial reservation to the declaration on food made during the World Food Summit held in Rome on 10-13 June 2002.⁴² It viewed that the attainment of the right to an adequate standard of living is a goal or aspiration to be realized progressively so that does not give rise to any international obligation.⁴³ This argument is not only deceptive to international cooperation and obligation of the developed countries to address the problem of poverty, but also a denial to 'share the empathy and humanity' to poor people.

³⁷ . Otto Spijkers, "Human Rights and development from an international, Dutch and personal perspective". See online at Social Science Research Network URL <http://papers.ssrn.com>

³⁸ . United Nation Millennium Declaration, resolution adopted by the United Nations General Assembly, 18 September 2000. UN DOC. A/RES/55/2 UN Press Release, 'World Leaders adopt 'United Nations Millennium Declaration' at conclusion of Extraordinary Three-Day Summit, 8 September 2000, UN DOC. GA/9758

³⁹ . *Millennium Declaration*, para 11

⁴⁰ . Although these goals are not legally binding, Alston has argued that most of the goals reflect customary international law. He states that 'at least some of the MDGs reflect norms of customary international law... it can be observed that the case would be the most easily made in relation to the first six of the Goals, and parts at least of the Seventh would be also a strong candidates. See at Alston, 'Ships Passing in the Night: The Current State of Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals' in the *Human Rights Quarterly*, Vol. 27 (2005), no. 3

⁴¹ . For an interesting paper on a human rights perspective on the Millennium Development Goals (and a criticism of the fact that human rights did not figure prominently in these goals), see Alston, "A Human Rights Perspective on the Millennium Goals, paper written in 2004, as advice for the Millennium Projects Task Force on Poverty and Economic Development.

⁴² . For the Original Summit see, <http://www.fao.org/wfs> and for the follow-up conferences, see <http://www.fao.org/Worldfoodsummit>

⁴³ . The reservation can be found in Part One of the Report of the World Food Summit: five years later, Rome 10-13 June 2002, p. 32. It reads" "The United states wishes to attach the following reservation to the Declaration of the World Food Summit... The United States believes that the issue of adequate food can only be viewed in the context of the right to a standard of living adequate for health and well-being as set forth in the Universal Declaration of Human Rights, which includes the opportunity to secure food, clothing, housing, medical care and necessary social services. Further, the United States believes that the attainment of the right to an adequate standard of living is a goal or aspiration to be realized progressively that does not give rise to any international obligation or any domestic legal entitlement, and does not diminish the responsibilities of national governments towards their citizens".

This is how anti-humanity international politics has played a very crucial role to perpetuate the state of hunger in the world. The grotesque state of deprivation the millions of people are subjected to live in is, to larger extent, an 'outcome of the attitude of the developed countries to neglect the responsibility of dealing with the crisis of poverty facing the poor people of the world'. While they have been interested to invest huge resources for 'armament and military' build-up, they are overtly arguing to deny that 'the right to food incurs international obligation'. As a matter of fact, in the South Asian region and in many other parts of the world as well, the frequencies of the types of stories of death by hunger are bound to occur phenomenally.

1.7 NEW INITIATIVES IN ASIA: CONCLUSION

The rise of Asia economically since 1980s has created a hope. The establishment of the Infrastructure Development Bank under initiative of the PRC and the Chinese Government's plans under president Xi Jinping for revival of the silk route along with its replication in the maritime trade system has generated a prospect of 'economic integration of Asia, from which South Asia is expected to benefit largely. Smaller countries like Nepal, Bangladesh, Myanmar and Bhutan are supposed to benefit from infrastructure assistance and markets in their neighbours. These initiatives are expected to 'instigate rapid economic development endeavours in such countries', thus providing a better prospect of employment to the economically marginalized countries. As widely discussed in the foregone paragraphs, the economic development is to address of the problem of deprivation of the millions of population in Asia and thus is expected to address the phenomenal problems of human rights. The linkage of human rights and development is thus a paramount theory of humanity in the modern Asia.