DEVELOPMENT, GOOD GOVERNANCE AND HUMAN RIGHTS

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References are always made to the importance of human rights but there has been little conceptual work devoted to the relationship between human rights and development programmes and projects, and translating this into actual work in the field. A human rights approach to development provides development workers broader but precise concepts and guidelines to address and integrate these rights in their work. Development, especially sustainable development, is important in the context of human rights. For being sustainable it must provide individuals with secure and predictable long-term access to the resources required to satisfy their needs and improve their well-being. The process of sustainable development implicitly involves working progressively to secure the rights of individuals to resources—economic, social, cultural, political and civil.

ALL HUMAN beings have the right to live with dignity at all times, regardless of their legal, social or political status. Human rights are not gifts to be bestowed at the whims and fancies of anyone, nor a privilege, an act of grace or charity. Equity and justice are at the heart of all human rights. Living with dignity and without fear are basic human needs. It includes adequate decent food, water and health, freedom from slavery, fair treatment under the law a shelter, etc. These basic human needs and values are at the foundation of universal ideas of human rights.

The human rights establishments attempt to institutionalise the protection of the weakest as the first and primary objective of formal and non-formal human institutions. From a basic human rights perspective, all people are entitled not to starve, not to suffer from preventable disease, to have opportunity to improve their economic condition, to have access to knowledge and information, and to decide on issues that affect their life.

The ability of the poor and marginalised to break the shackles of oppressive fear and injustice is the key to any process of socio-political
and economic empowerment. This process of empowerment requires a rights-based perspective and the facilitating role of organisations and institutions to create an enabling environment for people to realise their own potential to change their lives. Change in the lives of the marginalised people happens when they are able to assert their rights and make creative interventions against the unjust and unequal power relationships in society.

**Development**

Amartya Sen and James D Wolfensohn have pointed out that while researchers have defined development as a process of expanding the freedoms that people enjoy, the World Bank looked at development as a process that ends with freedom from poverty and from other social and economic deprivations. Sen further elucidates that:

Development can be seen as a process of expanding the real freedoms that people enjoy. These freedoms are both the primary ends and the principal means of development. They include freedom to participate in the economy, which implies access to credit, among other facilities; freedom of political expression and participation; social opportunities, including entitlement to education and health services; transparency guarantees, involving social safety nets, such as unemployment insurance or famine relief.\(^1\)

In fact, development goes much beyond the accumulation of wealth and growth of the gross national product and other income related variables. Economic development has other dimensions. Sen emphasises that:

Development has to be more concerned with enhancing the lives one leads and the freedoms one enjoys. Expanding the freedoms that we have reason to value not only makes our lives richer and more unfettered, but also allows us to be fuller social persons exercising our own volition and interacting with and influencing the world we live.\(^2\)

– To make development work, Sen and Wolfensohn elaborated in their statement that we need:

– A consolidated package of specific requirements that include honest government, open legislative and transparent regulatory systems, properly trained and remunerated officials and a vigorous commitment by leaders to fight corruption at all levels.

– An effective and impartial legal and justice system, with protection of positive support for rights and freedom of various kinds, a well-


\(^2\)Ibid., pp. 10-39.
organised and supervised financial system, effective social safety nets and essential social programmes.

- Education and knowledge institutions that offer access to all at every level. There must also be a real commitment to extend the coverage of health services, family planning and clean water and sewerage system to all.

- Physical infrastructure, national environment and cultural heritage must be protected.\(^3\)

Countries and citizens themselves, not the donor agencies or foreign experts must be in the driver’s seat. A general framework must be broadly accepted and particular strategies have to be discussed and developed. Development must be broadly based and broadly owned. Reaching that goals must involve wide participation of all sectors and groups of society.

The basis of development policies are concepts of “good society” and ways to get there. While most governments emphasise aggregate growth in wealth, production, public services, consumption, etc. others stress distributional aspects, i.e., ensuring minimum standards of quality of life throughout the population. The goal expressed is poverty reduction, where poverty is broadly understood as the lack of a series of basic human needs, capabilities and opportunities. Determining violations of Social Economic and Cultural (SEC) rights carries a similar perspective. Basic needs have to be expressed in term of rights.

The salient feature of current development is the economic growth model leading to healthy balance sheets and unhealthy populations. It is dominant in development cooperation programmes of funding agencies, International Financial Institutions (IFIs) in particular. An exclusive economic model has limited the social, political, civil and cultural dimensions of development. Attempts to integrate other aspects in the development policies, programmes or projects, which are usually purely economic, result in the lack of focus and direction.

Even at the start of the new millennium, development cooperation and human rights are dealt with as two distinct issues. Many development agencies tend to use human rights as a ‘conditionality’ to provide development assistance or to support separate “human rights projects” such as gender equality. Some agencies tend to confuse a rights-based approach to development with social justice, welfare or basic human needs approach.

A social justice approach implies a form of social welfare. The associate policies focus mainly on particular areas of need and disadvantage. The

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\(^3\)Amartya Sen and James D.Wolfensohn, “Development : A Coin With Two Sides”.
mechanism employed is the redistribution of resources to meet needs and removing disadvantage by providing fair access to services. With this strategy, development agencies and the government formulate policies and programmes by targeting areas of disadvantage and devising beneficial and remedial programmes. By trying to identify the gaps and redistributing resources to fill the gap, the approach is based essentially on a welfare model.

Policies and programmes which rest primarily on a perception of need and powerlessness subtly reinforce the powerlessness of the recipients who are seen as being ‘given’ justice. Social justice implemented in this approach resembles the basic needs approach to development cooperation. Both welfare and basic needs models operate in an essentially comparative way. The less fortunate are compared with the more fortunate. Measures are taken to achieve comparatively fairer outcomes. This promotes the view that there are no absolute entitlements but merely comparative entitlements. In this sense, entitlement of rights is not recognised as such, and without it, the most marginalised and powerless persons or groups shall never be empowered to make a claim against the state. This kind of development policies or programmes can only create dependency.

Another problem of the existing approach to development is the lack of participation in the decision-making process. In most cases, if not all, those concerned do not make the decisions. They do not even have the choice to make a decision. It may well be that the people concerned decide that they only want to be involved in certain decisions or that they would prefer to have their views represented by chosen members of their community. They may well choose to say to a project team: yes, you are the technicians, we trust you to decide the type, design and capacity of the water/sanitation/transport system.

The limitations of development projects also come from a heavy emphasis placed on the use and monitoring of funds, as well as the manner in which projects are evaluated. Most often, the evaluation is done on the project design document which specifies the number of house latrines, etc. to be constructed, or the achievement at suggested income levels. These are measurable and tangible. The problem here lies not in the fact that many projects focusing on rights may have less tangible outcomes and may take a longer time. The problem is that the instruments and indicators for such an evaluation are still being developed. Community buildings have vastly different meanings depending on the perspective and approach!

The present development paradigm links aid policies and programmes to poverty eradication, improvement of living standards and welfare. It is common to find development NGOs refer to social development. They
assume that while there is a need to provide communities with the ability to pull themselves out of the poverty trap through the generation of economic activity, it is also the state’s responsibility to provide basic health, education and security. The most problematic term here is ‘provide’ which is synonymous with giving. It does not embrace a commitment to participation either of aid agencies or recipients. When practiced, participation is seen as a tool for delivering projects as aid than as a right. To overcome its limits, development NGOs have to shift their development paradigm.

In such cases, ‘services’ simply can not be ‘delivered.’ Even education for children can not be delivered since they are subject to eviction and lead highly body-labour dependent lives. A rights-based approach that insures security of housing and livelihood becomes the only option when working with the poorest of the poor.

A charity-based approach creates dependency and creates an attitude of externalizing problem solving. Those who are at the receiving end of the charity or welfare, i.e. the beneficiaries—become victims twice over, since they are not enabled to become independent. The rights-based approach on the other hand is to create powerful, self-reliant individuals who can help others.

**Human Rights: Conceptual Framework and Its Normative Development**

A right is a “justified claim or entitlement.” It is a justified claim on someone, or on some institution, for something which one owes. The Oxford English Dictionary suggests a three-fold definition of a right:

- That which is morally or socially correct or just; fair treatment.
- A justification or fair claim.
- A thing one may legally or morally claim; the state of being entitled to a privilege or immunity or authority to act.

This definition compares well with what is generally understood by human rights scholars as an acceptable definition of rights. Morton E Winston defines rights as “An agent (A) has a right (R) to a particular good (G) if and only if the possession of the right (R) by agent (A) provides the basis for a justified moral or legal claim that other members of society have duties (D) to protect agent A’s enjoyment of G.” Winston further explains that the particular goods G referred to can range over many different sorts of things, e.g., interests, liberties and powers, or access to

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the necessary means of satisfying one’s interests or exercising one’s liberties or powers.

The claims derived from rights can be either moral or legal or both, but in either case, they are claims that call forth duties from other members of society directed towards the rights-holder. The corresponding duties of society can be ascribed to various different agents, e.g. governments, individuals, or in some cases, non-governmental organisations such as private agencies or corporations, and may include duties to prevent deprivation of G as well as duties to provide access to G to the rights holders.

Rights provide the basis for ‘justified” claims of the actual enjoyment of certain liberties, goods, powers or immunities by persons or peoples to be protected by society against standard threats. For human rights purposes, it can be said that a right is:

- A right, if and only if society has a duty to protect its enjoyment and redress its violation;
- A human right, if and only if being a human being is sufficient reason or condition for possessing that right.5

The human person possesses rights because of the very fact that it is a person, a whole, master of itself and of its acts, and which consequently is not merely a means to an end, but an end, an end which must be treated as such. The expression the dignity of the human person means the human person has the right to be respected, is the subject of rights and possesses rights. There are things which are owed to man because of the very fact that he is man.

These words invoke a crucial concept of human rights as natural law. It reflects a fundamental principle which emphasises the worth of the individual human beings and recognises their rights simply because of their being human.

Legal Standards and State Obligations

For a rights-based approach to development, a precise understanding of the international human rights instruments, their provisions, interpretations, limits and obligations of states is indispensable.

Human rights instruments come in the form of treaties and resolutions. Standards adopted by way of treaties (known as covenants, conventions and protocols) are binding under international law upon the states which have ratified or acceded to such treaties. The standards merely adopted by

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vote in international forums (in the forms of resolutions, declarations, codes of conduct, standard minimum rules and basic principles) constitute recommendations from intergovernmental organisations to member state.

Explanation and clarification of the articles are mainly made by the Committees for each covenant in their ‘general comments.’ For instance, for the ICESCR, the Committee on Economic, Social and Cultural Rights passes its ‘general comments.’

The UDHR proclamation on December 10, 1948 has set “a common minimum standard of achievement for all peoples and all nations.” The UDHR is an important milestone in the global protection of human rights—a process which is far from complete. The UDHR is regarded as the basic cornerstone of the international human rights system and provides the foundation upon which ICCPR, ICESCR and other international legal standards are based. The universality and continuing validity of the UDHR were reaffirmed by the international community in the 1993 Vienna Declaration and Programme of Action adopted by the Vienna World Conference on Human Rights, attended by 171 countries.  

The rights proclaimed by the UDHR are often divided into two distinct thematic categories: civil and political rights, and economic, social and cultural rights. The conceptual dichotomy is reflected in the existence of two separate covenants, the ICCPR and the ICESCR. These three instruments are referred to as the “International Bill of Human Rights”. However, the world had to wait for almost 30 years—till the two treaties ICCPR and the ICESCR signed in 1966 come into force in 1976—for the principles of the UDHR attain legal status as contractual commitments.

There are literally several hundred other human rights instruments, with general and specific contents, most of which have been adopted under the auspices of the United Nations, the International Labour Organisation (ILO), and the United Nations Education, Science and Culture Organisation (UNESCO). Regional organisations, like the African Union (AU, previously the Organisation of African Unity, OAU), the Organisation of American State (OAS), the Council of Europe, and the Organisation on Security and Cooperation in Europe (OSCE) have also passed a large number of human rights texts.


8Ibid., p. 101.
**Major International Instruments**

Besides the International Bill of Rights—the UDHR, ICCPR, ICESCR - there are major human rights and humanitarian instruments which have been adopted by the United Nations with particular relevance to specific areas of human rights and humanitarian law.

The major international treaties are the first and second Optional Protocols to the ICCPR. the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), and the Convention Relating to the Status of Refugees.9

**Individual and Collective Rights**

The emphasis in most of the human rights instruments is on the individual as a beneficiary of the standards. However, several human rights instruments provide for group rights. These include CERD, the UNESCO Declaration on Race and Racial Prejudice and the ILO Convention Number 169 which covers indigenous people. In these instruments, it is the groups which are entitled to protection.

Other instruments, like ICCPR in Article 27, address themselves to persons belonging to a group and their entitlement to rights in a community with other members of the group. Other instruments, in the field of solidarity rights in particular, often place an emphasis on people as beneficiaries. People are entitled to the right to development, the right to peace, a clean environment and natural resources, as well as decolonisation and the rights of self-determination.

**Rights Based Approach and Social, Economic, Cultural Rights**

The work on civil and political rights has its limitations, specially since the world, has many different forms of political systems spanning the entire range of human ingenuity. However, despite the differences in the administrative and political systems, the basic rights of individuals and communities—the social, economic and cultural (SEC) rights—need to be ensured.

The importance attached to SEC rights is not to devalue the civil and political rights in any way. All rights are indivisible. Arjun Sengupta, the UN independent expert on the right to development puts it succinctly:

If a group of destitute or deprived people are to have a minimum standard of well-being, a simple transfer of income through doles or subsidies may not be the right policy. They may actually have to be provided with the opportunity to work, or to be self-employed. which

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9Gopal Bhargava, *op.cit.*, p. 43.
may require generating activities that a simple reliance on the market forces may not be able to ensure. If improvement of well-being of the people based on the enjoyment of rights and freedoms is the objective of development, economic growth consisting of the accumulation of wealth and gross national product would not be an end in itself. It can be one of the ends, and can also be a means to some other ends, when “well-being” is equivalent to the realisation of human rights. A prosperous community of slaves who do not have civil and political rights can not be regarded as a community with well-being.

Present work on SEC rights has often been minimal, with charity based and service delivery being the norm, despite evidence of creating dependency and further marginalisation apart from being inherently unsustainable. A focus on SEC rights from a human rights perspective can be the unifying common denominator for international civil society action no matter what the form of government. The SEC rights are elaborated in the ICESCR.10

Core and Minimum Content

The core content of a human right refers to the entitlement or the set of guarantees that constitute the rights. The core content of an SEC right has both universal and unique characteristics.

The universal characteristics are those which apply to all rights. Non-discrimination is one such universal characteristic. No individual may be denied the exercise of any right on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Certain characteristics of the core content of each right are unique to that specific right. For example, access to immunisation against preventable epidemic diseases is the key component of the core content of the right to health, but it is not applicable to other rights.

The minimum core content is the non-negotiable foundation of a right to which all individuals, in all contexts, and under all circumstances are entitled. It is the intangible baseline level that must be guaranteed for all persons. It indicates a minimum below level which no government should perform, even in unfavourable conditions.

The concepts of core content and the minimum core content are not unique to SEC rights. Defining the core and minimum core contents of SEC rights is not without debate and controversy. Human rights champions should bear in mind that the concept of human rights is a continuously evolving process.

10Ibid., p. 45-52.
Obligations of the State

Human rights, like all other rights, are based on a relation between two parties—the claimant or the beneficiary of a right and the entity that is obliged to ensure that the claim is met. While individuals and groups are beneficiaries of rights set forth in the instruments, State Parties to international treaties have responsibilities under international law. A state is responsible for acts or omission which can be attributed to it as its own. But what constitutes the state? In International Law, a state is responsible for the action of:

- The government.
- Any political sub-division of the state.
- Any organ, agency, official, employee or other agent of its government or of any sub-division acting within the scope of their employment.

However, a state is not responsible for acts committed by one of its nationals against a foreigner. The individual may, of course, be liable to prosecution in the domestic courts and the government concerned may be held internationally liable if it fails to discharge its duty of diligently prosecuting and properly punishing the human rights violator.

Each human right carries corresponding state obligations. When states ratify international treaties, they commit themselves to abide by and fulfill the state duties required in the agreement. Human rights impose three types or levels of obligations on States: the obligation to respect, to protect and to fulfill. Thus under the International Law, obligations for human rights are primarily held by states.

At both national and international levels, there may be moral responsibilities. But when it comes to human rights, moral responsibilities are not enough. Human rights standards are, in most cases, guaranteed by both domestic and international law. The essence of human rights is to put obligations on states for certain minimum norms of conduct vis-a-vis all persons.11

Another important element is the concept of human dignity which is reflected in the relationship between each person and society in which qualities and inherent value must be ascertained. In this context, rights of persons are recognised vis-a-vis their society. Human rights thus imply two levels of relationships—between individual and individuals in which the respect of each other’s rights constitute a crucial duty and between individuals and states in which the state has duties to respect, protect and fulfill the rights and freedoms of each and every individual and group.12

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The Obligation to Respect

States must not destroy but respect the human rights standards set. State authorities must not keep people away from educating themselves, they must not tolerate unfair trials, and they must not torture. Such obligations are sometimes called negative obligations since they tell states what they must not do.

The Obligation to Protect

States must protect the human rights standards. This positive obligation mandates states to take action. With regards to persons enjoying human rights standards, states have to prevent third parties from destroying the quality of life, i.e. they have to ensure that children are not prevented from attending school, have to prevent judges from being bribed by third parties to conduct unfair trial, etc.

The Obligation to Fulfill

This is a positive obligation of the state. This state obligation requires appropriate measure to be taken to make sure that the human rights standards are attained. States have to provide remedies to address a faulty trial, guarantee access to education, and provide for intervention in situations of torture to stop it.

The obligations of state parties are expressed through the use of the terms: undertake to take steps, to the maximum available resources, achieving progressively the full realisation, and by all the appropriate means, including particularly the adoption of legal measures. The Committee further elaborates that obligations of states include both obligation of conduct and obligation of result.13

Progress Realisation

The overall objective of the ICESCR is to establish clear obligations for State Parties in respect of full realisation of the rights in question. It thus imposes an obligation to move as quickly and effectively as possible towards that goal. ‘Progressive realisation’ must be interpreted in such a way that not only there is continuous improvement but the state is also obliged to ensure that there are no regressive developments.14

To the Maximum of its Available resources

The notion that economic resources are essential for the implementation of economic, social and cultural rights has been the major justification for considering it secondary to civil and political rights. The Committee on

14Gopal Bhargava. op.cit., p. 55.
Economic. Social and Cultural Rights has acknowledged the importance of resources in fulfilling the rights but does not consider resource availability as an escape clause. It states that in case where significant numbers of people live in poverty and hunger, it is for the state to show that a failure to provide for persons concerned was beyond its control.

**Undertakes to Take Steps**

It is clarified by the Committee that while the full realisation of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the states concerned. Such steps should be deliberate, concrete, and targeted as clearly as possible towards meeting the obligations recognised in the ICESCR.

**Non-discrimination**

Non-discrimination is a basic principle of human rights and is considered a core human right. It is a precondition of peace and development and a fundamental aspect of state’s obligations. In the implementation and enforcement of human rights, it emphasises that everyone is entitled to the enjoyment of human rights irrespective of their colour, gender, religion, ethnic, social or national origin, political or other opinion, property, birth or other status.

The principles of equal enjoyment of human rights and non-discrimination in this applies across the board to all categories of rights. This is the thumb rule underlying the international human rights instruments. The UDHR, as well as all other human rights treaties explicitly emphasise the principle of non-discrimination. A number of human rights treaties are exclusively dedicated to non-discrimination, for example, the elimination of discrimination against women (in CEDAW), the eradication of racism and racial discrimination (CERD) and respect for the rights of minorities and indigenous peoples. Certain International Labour Organisation (ILO) treaties are designed to avoid discrimination in employment and at the workplace.

Article 2 (2) and 3 of ICESCR and Article 3 of the ICCPR deal with non-discrimination. They provide for the equal rights of men and women to enjoy the rights set forth in the Covenant. The concept of “progressive realisation” is not applicable to the non-discrimination clause nor to the obligation to ensure equal rights of men and women. A state is obliged to ensure the non-discrimination and equality clause immediately rather than progressively. Its obligation includes affirmative action to eliminate conditions that contribute to discrimination. The UN Committee also emphasises that discrimination is not restricted to those grounds identified
under the Covenant and includes discrimination based on age, health, status or disability.

**Obligation of Conduct**

A state has to carry out this action or has to abstain from that action. It also means that a state has to undertake a specific step to act or to refrain from action. For example, enacting a law prohibiting forced labour is an act of conduct. The action or conduct must be specific.

**Obligation of Outcome**

This means attaining a particular outcome through active implementation of policies and programmes. The state has to achieve some result. However, the state in question cannot be blamed for the simple fact that result is not achieved if there are acceptable reasons. Some obligations of result may be mere programmatic statements.

**Obligations of Non-state Actors**

Human rights, and human rights law, were intended to protect the individual against excessive use of state power. The key international treaties make explicit that only states hold human rights obligations. However, in the present context of globalisation, the role of state is reduced. With the decreasing role of the state and increasing role of non-state actors, the challenge of a rights-based approach is to ensure that human rights forms the normative value base of society and all relationships. This position of human rights defenders—that human rights form a normative value base for all relationships—is slowly becoming a ‘mainstream” position. Only such a normative base can ensure a life with dignity for all at times.\(^\text{15}\)

An orientation that is heavily state-centred fails to take into adequate consideration the changing environment at both national and international level. Non-state actors, such as transnational corporations (TNCs), IFIs fundamentalist groups and armed opposition groups have an increasing impact on the enjoyment of rights—the SEC rights in particular.

International human rights laws do not oblige private actors to act in particular ways and therefore they cannot be brought to account directly through human rights law. However, human rights law does oblige states to regulate the conduct of non-governmental actors, including corporations to ensure they do not commit human rights abuses.

There is increasing evidence that activities of corporations have a negative impact on all sorts of rights be they economic, social, cultural, political and civil. In *The Circle of Rights*, some approaches are

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recommended when considering the obligations of non-state actors.

- Human rights obligations may be imposed on non-state actors by national constitutions or laws, and activists should research and identify such applicable constitutional provisions or laws.
- State-owned corporations are considered to be part of the state and held responsible under the state’s obligations.
- The courts in some countries have placed human rights obligations directly on non-state actors. Activists should be aware of the jurisprudence in the venue of concern to them.
- Non-state actors, including corporations, can be held directly responsible according to the provisions of certain human rights treaties, like the Genocide Convention.
- Corporate activities may be addressed indirectly through the state’s obligation to protect.

International Financial Institutions, the World Bank and the International Monetary Fund (IMF) in particular, have been criticised because they have shown little interest in human rights despite the fact that their activities affect the lives of people, specially the most vulnerable and the poor living in developing countries.

The Committee on Economic, Social and Cultural Rights has noted in its General Comment No. 2 on this issue that:

Development cooperation activities do not automatically contribute to the promotion of respect for economic, social and cultural rights. Many activities undertaken in the name of development have subsequently been recognised as ill-conceived and even counter-productive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt with in the Covenant should, wherever possible and appropriate, be given specific and careful consideration.

Until recently the IFIs put emphasis on ‘good governance’ in which the concept of human rights can be included. In the beginning of the 1990s’ the World Bank launched the poverty eradication programme and increased the lending for human resources development almost five-fold in dollar terms since the early 1980s. But the framework focuses on basic human needs not human rights per se. In general, the IFIs still deny that human rights rules and good governance practices such as transparency and accountability are binding upon them. Moreover, in many cases, development aid and lending to developing countries are still perceived as a form of charity.
An eminent scholar writes that:

“The World Bank and the IMF are set up by states and their governments. These states have undertaken human rights obligations by ratifying various human rights instruments, and they should not be able to neglect such obligations because they sometimes act through an international organisation.”

As specialised agencies and as international organisations composed by states which are bound by UN decisions, the IMF and the World Bank should acknowledge their obligations to comply with all binding decisions of UN organs. Moreover the relationship agreements between the UN and the World Bank and the IMF require that these institutions consider the decisions and recommendations of the UN.

Though state obligations are fundamental to the realisation and enjoyment of rights yet the individual is the active subject of all economic and social development. Non-state actors and IFIs are directly or indirectly legally and morally bound by the obligations and can play an important role in the promotion and protection of human rights. Individual aspirations and expectations of human rights and dignity can be accommodated and fulfilled in the process of social, economic and technological changes.

**Basic Foundation of a Human Rights Approach to Development:**

**Understanding the Right to Development**

The right to development links human rights and development, in particular social and economic development. Although, there is no full agreement on the scope of the Right to Development, the Vienna Declaration and Programme of Action reaffirms it as a universal and inalienable right and an integral part of fundamental human rights.

The UN General Assembly adopted the Declaration on the Right to Development in 1986. The declaration defines development as a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting from it. The definition makes following significant points and reflects several aspects as to the content of the right to development:

- It is clear that as all human rights and fundamental freedoms are indivisible and interdependent, equal attention and consideration should be given to the promotion, protection and implementation of all human rights, whether they be civil, political, economic, social or cultural.
- It emphasises the importance of participation. The participation of all individuals in development must be active, free and meaningful. Women
must have an active role in the development process. Education should enable all persons to participate effectively in a free society.

- It should be seen in the context of basic needs and social justice. Reference is made to the need to ensure that the improvement of the well-being of the entire population and of all individuals takes place on the basis of their participation. This partnership lies in development and in the fair distribution of the benefits resulting from it. There must be equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

- It emphasises both national policies and programmes and international cooperation. Just as the right of self-determination means a right of the people vis-a-vis their own government, the right to development formulates rights for individuals, groups and peoples vis-a-vis their government. However, international cooperation is also needed.

In effect, human rights and development are not distinct or separate spheres. Development is a subset of human rights. All development must be to ensure human rights of all, both individually and collectively. This runs counter to the assumptions underlying the current approaches to development cooperation and human rights which treat development and human rights separately. A human rights-based approach to development is well served by the concept of the right to development, provided that the right is seen as a true human right. The question, therefore, is not how to identify points of actual or potential intersection, nor to link the two by way of conditionality but to look at development as a right.

**Non-discrimination in Development**

The concept of non-discrimination primarily reflects a notion of justice as based on consistent treatment and often formulated in terms of concepts such as equality of opportunity and results. More attention needs to be paid to the results focusing on the distribution of jobs, property, status, and of representation. Three models are attached to developing conceptions of equality:

- An *individual justice model* focuses on cleansing the process of decision-making, concentrating on securing fairness for individuals, and reflecting respect for efficiency, merit, and achievement.

- A *group justice model* which concentrates more on the outcome of decision-making than on the process of making decisions. It seeks as its primary aim to improve the relative position of particular groups.

- A *participative model* whose primary aim is to give excluded groups
an appropriate voice in public affairs. It is achieved by a remedial structure which would weave policies of equality into the fabric of decision-making across all spheres of government. This is done by involving the affected groups themselves. Most important is the facilitation of participation by empowering the disadvantaged.\textsuperscript{16}

A human rights approach to development that includes non-discrimination pays special attention to disadvantaged groups and individuals in society. Most development projects already address some of these groups, especially the poor, women and children. For a human rights approach to development, the non-discrimination principle needs to be integrated in development projects.

It has to be supplemented by the recognition of the legal obligations of the state and incorporating non-discrimination in the development policy. Broadening the consideration of equality and non-discrimination to all spheres of development policy and implementation and ensuring that measures against discrimination neither depend on specific programming nor change according to political decisions are indispensable. In brief, in a human rights-based approach to development, equality and non-discrimination must become a criterion for designing programmes and policies. The elimination of discrimination must become a benchmark for measuring their success.

**Participation and Empowerment**

Declaration on the Right to Development stresses that by virtue of their inalienable right to development, every human person and all peoples are entitled to participate in and contribute to (and enjoy) development.\textsuperscript{17} It clarifies that development policies can be legitimate only if they are predicated upon the active, free and meaningful participation of the people. Participation is considered as a right. Therefore, participation is a right of the people and is not an optional gift to be bestowed upon citizens by governments. Neither do the governments have the prerogative to determine the purpose, form and extent of participation without reference to those concerned.

Participation is recognised as having a central and decisive role in development models. ‘Participatory development’ and “people-centred development\textsuperscript{1} are frequently linked to sustainability. The notion of participation is always associated with the terminology of ‘empowerment and ownership.’ But it is not enough.\textsuperscript{18}

\textsuperscript{16}Upendra Baxi, *op.cit.*, p. 136.
\textsuperscript{17}Article 1 of the DRD.
In human rights-based approach to development, participation also links with ‘control.’ Control means ‘power of directing, to exercise authoritative or dominating influence over or to exercise restraint or direction over.’ Participation understood as control should not be confused with ‘involved’ ‘consulted’ ‘empowered’ or even ‘ownership’. To ask who has control means who has power to direct a particular aspect of any development programme or policy. Understood in this way, participation requires the right of self-determination which implies that the people have the right to determine their path of development. For this, they need other human rights to education and information. An appropriate standard of living with adequate food, housing, health, etc. is another precondition for participation as well as an outcome.

Although, the inclusion of participation in development policy is not a new concept, donors, development organisations, and even NGOs have a somewhat formal understanding of participation which often means informing the people concerned of more or less fully planned or designed projects. More frequently, participation was embraced as a component for effectively delivering the predetermined results. However, a human rights approach implies that participation is a right and not an instrument to increase the acceptance of programmes and projects that are brought to the people.

Participation as a human right underlines the duty of both, insuring the conditions for participation and dismissing paternalism and charity. Participation in a human rights approach includes control of planning, process, outcome and evaluation. In this perspective, participation respects the fundamental human rights tenet that people are the subjects, the active players, who determine and freely pursue their economic, social and cultural development. Participation in this sense demands democracy and strong civil society and conversely strengthens civil society and democracy.

**Good Governance**

Perhaps, the only characteristic that stigmatizes India as a developing society is the maldistribution of national income, seemingly apparent in the widespread poverty. The answer lies in better management of human and material resources currently conceptualised as ‘good governance’. The liberal policies of globalised economy can do the ‘Kalam miracle’ of touching the ‘developed’ status by the year 2020. The Indian society is capable of attaining this and the Indian polity has become equally strong for this ‘capacity building’. The need is only to search a viable and workable

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model of more efficient and efficacious government and administration through democratic processes of a participatory polity.

Ever since Osborne and Gaebler published their celebrated treatise on Reinventing Government, the term ‘good governance’ is being used as a panacea for all political ills in the march of democracy. Christianising their thesis as “a new Perestroika”, the authors offer a ten-point conceptual frame “not to seek new lands but to see them with new eyes”. They challengingly conclude that “people do not need more government or less government. They need only better government, to be more precise, they need better governance”. This concept needs content analysis. The intellectual debates can creatively explore and add meanings to various sub-concepts like catalytic government, mission-driven government, enterprising government and competitive government. It is pertinent to ask: “should a government be called democratic, if it does not show results or hampers the process of people’s empowerment by rule-driven bureaucracies?” Fifty years of Indian democratic polity are usually acclaimed as the crowning glory of adult suffrage. But has this government “BY THE PEOPLE OF INDIA” successfully accomplished that adequate minimum which is necessary for a ‘citizen-friendly government’ “FOR THE PEOPLE OF INDIA”? A ‘mission-driven’ government seems conspicuous by its absence in the unhappy experience of our younger generation in the new millennium. They do not see their democratically elected governments catalysing the Indian society for an innovative change. Even rhetorics of decentralisation have failed to develop a participatory polity for the well-being of the rural millions. Community-owned government in India is still a distant dream, at district level or even at the level of panchayats. An open and competitive liberal economy, though launched with a human face haltingly advanced with caution. Downsizing of bureaucracy and the need for debureaucratised governments were being seen with suspicion by the Leftist partners of United Progressive Alliance. ‘Regulation’ of a market-oriented economy is paraded as an “entrepreneurial government in disguise”.

‘Good governance’ is a buzzword in today’s globalising economy, which has received considerable attention the world over. The last decade of 20th Century witnessed the phenomena of globalisation, liberalisation and privatisation. The concept of good governance is often associated with this trio. The set of strategies to achieve good governance are being put forward by international lending agencies such as World Bank and the International Monetary Fund (IMF). The package of reforms, which is being presented, is necessary for good governance, forms parts of the wider agenda of economic reforms and liberalisation. In fact, good governance
may be characterised as a participatory, consensus arrived, accountable, transparent, responsive, effective and efficient government based on the rule of law. It assures that corruption is minimised, the views of managers are taken into account and the voices of the most vulnerable in society are heard in decision-making. This is also responsive to the present as well as the future needs of the society. In fact, ‘governance’ is a very dynamic concept and needs constant reforms. The government of the day must move in a specific direction and number of strategies to be put forward by several institutions and government.

The concept of governance is not new. It is as old as human civilisation. It simply means the process of decision-making and the process by which decisions are implemented. In this backdrop, an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the decisions made. It means formal and informal structures that have been set in place to arrive at and implement the decisions.

Governance is a paradigm denoting something more than government, and replacing the traditional meaning of the term ‘government’, which refers to a set of instruments through which people living in a state, believing and sharing a common core of values, govern themselves by the means of laws, rules and regulations enforced by the state apparatus. Governance has become a very fashionable way of talking about reform in government and its relations with society. More particularly, it is emphasising the need for developing nations to adopt and replicate ideas and institutions of industrialised societies.

Good governance can be said to be equivalent to purposive and development-oriented governance with organisational effectiveness and commitment to improve the quality of life of the people in a transparent, participatory, just and equitable manner. It is a dynamic and ever-evolving concept encompassing the fast changing political, social and economic milieu at both domestic and international levels.

Good governance accomplishes this in a manner which is essentially free of abuse and corruption and with due regard for the rule of law. The true test of good governance is the degree to which it delivers, protects and ensures human rights—civil, cultural, economic, political and social. The actual meaning of good governance for a common man is guaranteed right to health, adequate housing, sufficient food, quality education, fair justice and personal security. The true criterion of good governance lies in wiping every tear from every eye. The purpose of good governance is not only to provide basic amenities to the people but a life, which is qualitative and dignified in the real sense of the term. The main attributes of good
governance are participation, rule of law, transparency, responsiveness, consensus-oriented, equity and inclusiveness, effectiveness and efficiency and accountability. In brief, the concept of good governance is an amalgam of all these elements.

Good governance in the context of globalisation has many connotations and, therefore, there is no commonality regarding its definition. In the post-industrialised, post-modernised and post-militarised world, there is a debate regarding the changing nature of the nation-state system in the new millennium. The state is still the supreme actor in the international system and bears the main responsibility for governance of its people. With the state’s sovereignty, eroding fast, the state is subjected to various kinds of interventions. Globalisation has immensely increased the intensity of such interventions, which are done by supra-state structures. These structures and institutions do not allow the state to independently decide what is ‘good’ for their governance. The prescriptions from such organisations are imposed upon the states and these are dubbed as good governance. In this era of globalisation. International organisations controlled by the West pretend that they are the only custodians of humanity in the world and whatever they utter is a Gospel so saviours should follow it. A universal model of liberal democracy and free trade economy is imposed on every state, as it is said, it has successfully worked in the Western states. The state in contemporary times has not remained autonomous and the days are gone when a state could deliberate on its own model of good governance, which prescribes to its conditions. Now, the debate on good governance is not that globalisation should be adopted or not but it is clear that it has come here to stay. The debate today is between comprehensive globalisation and regulated globalisation. Reforms have to be attempted at various levels of government to bring the developing countries, including India, out of morass of problems in which they are stagnating.

**Good Governance as a Human Right**

The key dimensions of good governance are accountability, a legal framework for development, information and transparency. Human rights values become non-negotiable for good states. The human rights approach stresses that states and state institutions are only instruments for protecting, promoting and securing human rights for all.

The Universal Declaration of Human Rights (UDHR), especially Article 21, provides a good starting point. The characteristics of good governance derive from, or are related to, UDHR and include:

- Government officials must be accountable for their actions through clearly formulated and transparent processes, and more particularly
the legitimacy of a government must be regularly established through a well-defined open process of public choice.\textsuperscript{21}

- The safety and security of citizens must be assured,\textsuperscript{22} the rule of law must prevail and citizens must be protected from arbitrary or capricious actions by public authorities.\textsuperscript{23}

- Everyone has the right to an adequate standard of living and the necessities of life, which should be provided for the benefit of all citizens in an equitable manner.\textsuperscript{24}

- Freedom of association and expression of opinion must be permitted and information must be readily available to ensure accountability.\textsuperscript{25}

**Good Governance as a Tool**

There seems to be no consensus on what the term good governance covers. Human rights defenders have for long held the view that the UDHR and the values held therein form the basis of good governance. Good governance is now used more as technical criteria connected to efficiency and excludes consideration for rights. Good governance in itself is not sufficient. The Nazis are the epitome of good governance, especially transparency, as a techno-managerial tool.

In the recent past however, there has been a shift to defining good governance as a techno-managerial tool for efficient programme implementation. There is a world of difference between these two positions. For the World Bank, governance means “the manner in which power is exercised in the management of a country’s economic and social resources for development.” The bank further develops four principal components of governance, namely public sector management, legal framework for development, accountability, and transparency and information.

The World Bank’s concept of good governance covers several elements that are intertwined with the functioning of public administration. Effectiveness and efficiency are important key words. The term is used by the bank to denote the use of political authority and exercise of control in a society in relation to management of its resources for social and economic development. The term ‘good governance’ is elaborated by the World Bank as denoting “predictable, enlightened and open policy, processes, bureaucracy with a professional ethos, a government accountable for its actions, a strong civil society participating actively in public affairs, and all under the rule of law.”

\textsuperscript{21}UDHR, Article 21.
\textsuperscript{22}UDHR, Article 35.
\textsuperscript{23}UDHR, Articles 7, 8, 9, 10 and 11.
\textsuperscript{24}UDHR, Articles 22, 23, 24 and 25.
\textsuperscript{25}UDHR, Articles 19 and 20.
Good governance has become integrated in the cooperation policies of most development agencies and donors. Governance is seen as an essential part of building state capacity. The ‘recipient government’ is forced to become more accountable ‘outwards’ to ‘donors’ rather than ‘inwards’ towards their own citizens. There is an assumption that sustainable economic and social development on the one hand and human rights, democratisation, and good governance on the other are intertwined in a mutually supportive relationship. Under this assumption, human rights, democracy and good governance are perceived to be mutually supportive and interdependent entities.

This form of “good governance” does not always go hand in hand with human rights thinking. In many cases, capacity building does not necessarily improve human rights conditions and successful good governance programmes can co-exist with a recipient government that regularly violates human rights. This can be explained by the fact that techno-managerial good governance has development as its goal. The governance debate looks towards human rights not for their intrinsic value but for their instrumental role in creating an environment for sustainable economic development.

Those who would like to exempt themselves from adhering to human rights standards prefer the techno-managerial mode. They themselves are often human rights violators.

**Characteristics of Good Governance**

Governance is bounded by four properties: authority, reciprocity, trust, and accountability.

**Trust**

Trust is the normative consensus on the limits of action present in a political community. Indicators of trust in a political community are the extent to which individuals and groups in society cooperate in associations that cut across basic divisions such as ethnicity, race, religion, and class.

**Reciprocity**

The quality of social interaction among members of a political community is reciprocity. An important indicator of reciprocity is the extent to which individuals are free to form associations to defend and promote their interests in the public realm.

**Accountability**

Accountability refers to the effectiveness with which the governed can exercise influence over their governments. Trust and reciprocity are not easily sustained without specific rules of holding the executive accountable to civil society.
Authority

Authority is the legitimate use of power. Authority is facilitated by the other three variables but it goes beyond these in stressing the significance of effective leadership. Indicators of authority consist of compliance with not only given policies but also the process by which they are arrived, i.e. the extent to which leaders respect rules or change them in ways that are acceptable to the governed.

The more the four variables are present, the greater the likelihood of good governance. The more authority, reciprocity, trust and accountability there is, the higher the likelihood that individual rights are respected by the state. Good governance in this sense means that the state comes closer to its citizens and starts negotiating more with the citizens in provision of basic services.

Integrating Human Rights into Governance

While there is a conflict between the value-based and techno-managerial perception of good governance, the relationship between human rights and good governance is not conflicting. It is one of mutual benefits. Governance policies may benefit from legal human rights obligations and governance measures can also strengthen the protection and fulfillment of human rights. But because the two are different concepts and have different foundations, bridges must be built. How can the linkages or bridges be built between human rights and good governance?

The concept of human rights is explicitly normative, involving ideas and values about how a state should act towards individuals. Human rights are a means to the end of human dignity, and therefore they set some minimum standards of what human dignity should encompass. The latter implies minimum standards of how the state should govern. In this perspective, good governance should primarily be defined by human rights standards and only secondarily by economic and managerial criteria.

Human rights are something that individuals and groups are entitled to. Good governance is something that the authorities are obliged to do. From a rights-based perspective, the concept of good governance should function as a supporting mechanism in an endeavour to increase the legal protection of the economic, social and cultural rights of the people.

Although frequently human rights are not considered as an integral part of good governance and good governance is seen as a means to improve the people’s possibilities to claim their human rights, still good governance can offer something to human rights (and vice versa) if good governance is to be described as accountable, transparent administration under the rule of law.

Good governance is a basic dimension for the realisation of human rights in general and for the success of participation. If the development
agencies intend to relate their activities to human rights, then all elements of human rights must be respected. Good governance must be related directly to human rights.

If good governance is predominantly participatory, equitable, and promoting the rule of law, then good governance touches directly upon a fundamental foundation of human rights and is based upon a proper observance of human rights. The manner in which power is exercised by the state and the value it is built on is central to creating and sustaining an environment, which fosters strong and equitable development. The state needs to be rebuilt from top to bottom based on human rights values.

**A Human Rights Based Approach**

Advancing a human rights approach to development requires a new paradigm and a new perception of both rights and development. The dignity and well-being of human beings are the foundation on which a rights-based approach is built. Working for development by extending services or providing for basic needs is different from working to ensure the enjoyment of rights, SEC rights in particular. The effect of depriving basic SEC rights on the dignity of a person cannot be ignored. Individuals cannot be asked to wait for economic development to happen before their dignity is respected.

A rights-based approach is founded on the conviction that each and every human being, by virtue of being human, is a holder of rights. Thus a rights-based approach does not involve charity or simple economic development, but a process of enabling and empowering those not enjoying their human rights to claim their rights. The process of staking a claim not only asserts an individual’s ownership of his or her entitlement, it also helps define the rights and raises awareness that what has been claimed is not a privilege or an aspiration, but a right.

But what does a rights-based approach to development mean:

- It means the difference between a right and a need. A human right is something to which one is entitled solely by virtue of being a person. It is that which enables one to live with dignity. A right can be enforced before the government and entails an obligation on the part of the government to honour it. A need is an aspiration which can be quite legitimate, but is not necessarily associated with an obligation on the part of the government to cater to it. Satisfaction of a need cannot be enforced. Rights are associated with being, whereas needs are associated with having.

A rights-based approach focuses on the rights themselves and the apparatus that make the violations possible. It does not focus solely on defending or attacking the form of government, on making statements for
or against the victim’s political inclination, or on the alleged or actual motivations of those violating human rights.

A right is defined on the basis of dignity, on the basis of being. It is not defined on the basis of having or the social or economic programme of party or a government. A political programme can and should be negotiated, where dignity is non-negotiable. Political programmes are necessary to honour human rights, but they cannot be substituted for the latter. Political programmes are subject to change in social and economic dynamics, and what is important today may not be important tomorrow. The dignity of the individual is immutable; it is the same at all times and in all places, and its essence transcends cultural particularities.