HUMAN RIGHTS JURISPRUDENCE AND
RIGHT TO DEVELOPMENT

SUMMARY OF THESIS

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SUMMARY

CONCLUSION AND SUGGESTIONS

Development as a discourse has got multiplicity of meanings and it has been articulated differently in different historical times, as the histories of suffering people everywhere. Same happens to be the narratives of human rights and it does not carry any monolithic unity in meaning and scope, it has (had) been changing with passage of time and within and beyond historical trajectory. As it has been already clarified in the preface, that scope of this research is only focused to a limited dimension of themes of Human Rights and Right to Development. However, during the course of research some theoretical and conceptual interlinkages those emerge from interdisciplinary perspectives and inform the discourse of human rights jurisprudence and right to development and connected issues have touched upon.

While setting the tone of the research and task at hand the research begin with tracing the Human Right Jurisprudence and right to development by analyzing both the concepts and its connections with various contemporary issues. While explaining these conceptual questions one finds that how Human Resource, Development and issue of basic need as connected with each other and how they impact and create a body knowledge and offer explanatory and descriptive accounts of rights based debates and its deeply embedded consequences for the right to development and its empirical dimension and possibility of realization in every-day-life of human individuals.

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The issue has been raised that the failure of the economic and social system to achieve a basic minimum condition of life for hundreds of millions of people in third world has lead to a widespread recognition of the need to give primacy to securing universal access to basic social and economic goods and services. It has been emphasized on the fulfillment of at least the ‘basic needs’ of the people and how initially this question of basic need was associated with the question of Human Right and Right to Development. On close readings of policy documents and declarations on these themes enables the researcher to critically examine the challenges and possibilities in the backdrop of human rights and how these claims should not be a concern and mater of rhetoric and polemics rather must be addressed from egalitarian and socio-economic perspectives, and over here civil society and non-state actors play an important and significant role in realizing these afore stated goals of bare minimum human rights to each and every individual and community in the deprived third world countries.

This thesis also contextualize that how the debate regarding Human Right moves from First generation of Human right(where more importance was given to civil and political rights) to second and third generation of human right where social, economic and group rights are given importance. And in the process of moving from first generation to third generation of Human Right reflects the paradigm shift in the changing debates and politics of Human Rights and question of Right to Development and its interface with Human Rights is one of such question of shifting paradigms of Human Rights and Right to Development.

In this shifting paradigm, not only the traditional approach regarding the human rights were questioned but the traditional approach regarding the notions of ‘Development’ was also
questioned where the economic growth was reflected as a maker of
development. And a radically new idea of ‘Development’ came for
the discussion where it was the social development/Human
development (all debates regarding the human development
report/human development index) which now set the parameter of
development and the development is no more measured only in terms
of economic growth, construction of infrastructure, expansion of
industry and increased production, consumption of goods and
services rather basic grammar of human rights has witnessed change
in contemporary debates and thesis has gone into details of these
claims and offered a critical analysis to construct socio-cultural and
economic logic of human rights discourse. However, it was not
possible to delineate only conceptual and theoretical underpinnings
thus thesis purported only socio-historic and empirical dimensions
those are directly connected with reasoning and background of right
to development.

This thesis also problimatized changing attitude that emerged
and reflected in efforts of convergence of the idea of human right and
development and by late 70’s it has been one of the most important
agendas in any human right discourse. This very idea of convergence
of Human Right and Human Development suggest that how
integration of concepts of Human Rights into Human Development in
to Human rights can enhance the value of each other in a constructive
manner. And interestingly enough, these processes of convergence of
human rights and it taking cognizance of human development is not
only an abstract and philosophical exercise rather it goes into urgent
need and necessities of human rights thus it can be a claim(s) that
construct the background of collectivity and normative ethical
responsibility of state and promise to protect and safeguard rights in
universal manner.
The integration of Human Development into Human Rights is very helpful in quantification of progress made in Human Rights. And at the same time, thesis also laid emphasis that language of human development needed to invoke historical diversity in envisaging the possibility of human good otherwise it becomes merely an ethical imperative minus historical resources of society and its ways of articulating the notions of justice, equality and multiple senses of human rights. Thus, in a nutshell, thesis develops an argument about human rights and human development at empirical levels and maps out the claims of universality on the one hand and cultural historical contextuality on the other to make this a comprehensive and analytical discourse rather than merely putting on descriptions of provisions of declarations.

It has been made clear that development needs a proper environment and today's democracy is considered as the best environment for the implementation of the right to development, because the notion of Right to Development seeks for participation of individuals and marginalized community and subalterns masses who are otherwise denied the possibility to be part of development processes and hence participatory democracy strengthens the scope of right to development and making more inclusive rather than exclusionary process. However, thesis does not claim that participatory democracy is sufficient in enhancing the scope of right to development rather it's only a necessary framework to include the excluded marginal citizens.

After exploring the conceptual questions and theoretical preludes of right to development, thesis also traces the genealogy of right to development and its historical matrix. It highlights various up and down regarding the evolution of the concept of Right to Development and reason out the historical background and figures
out causes and reasoning such as: how Declaration on Right to Development was finally passed by the general assembly of United Nations. The research highlights, that right to development came into existence as an assertion of developing countries and their struggle for a new international economic order (NIEO). The research explores intelligible connections that how this concept enters into the UN forum and what has been the attitude of various countries towards the very foundational understanding of development and its material and non-material sources and also tries to captures the meanings and contestations among the developed and non-developed nations and making of, the Declaration on Right to Development in 1986.

Some point of reference emerged from the research that how this declaration have been taken by various quarters. Some sees it as a new kind of Human Rights, while other declares it a sum of already existing human rights. Some believes that by Declaration on Right to Development the unity of Human Rights was achieved which was lost during cold war and unity of human Rights was lost somewhere between the preference between civil and political rights in the one hand while socio economic and cultural rights on the other. While other says it’s not a right at all. Though, in making of these prophetic claims they are in denial mode and try to critique abstract reasoning about human rights. Simultaneously, thesis explores the possibility and historical necessities of right to development so that the fruits of development may reach to the last persons who constitute the bottom of society; this is being equally emphasized by John Rawls in Theory of Justice as minimalist conception of justice.²

The research also examines the nature of Declaration on right to development and it throws light on the various articles of

declaration on right to development, 1986. By examining the Declaration on Right to development it comes out that Declaration on right to development claims that Human person is the centre of development and should be active participant and beneficiary of the right to development.

The declaration on right to development is a very small document containing just ten articles but at the same time it covers issues like promotion and protection of human Rights, individual and collective responsibility for development, international co-operation for just political order, participation of people in development.

At the same time, the research also raises some jurisprudential questions in the context of claims of “The Right to Development” as a legal entitlement. Here the research raises the question that in case if right to development is considered as enforceable rights, nationally and internationally then who is the right holders and against whom these rights will be enforced. Since, it emerged from the declaration on right to development that it refers “peoples” as right bearers while state is considered to be main entity upon whom the duty has been imposed. But there is another angle of the declaration where the developing nations asserts their right to development against the developed countries and this becomes the bone of contention and contestation. It has been shown in the thesis that connections between real-politics and interests group play an important role in determining the constitutive and regulative rules of game in understanding the deeper aspects of politics and aspirations for the claims regarding (RTD), that the international institutions, as well as developed and developing countries have their positions and positionality regarding the declaration on the right to development according to their convenience and politics. As it is very apparent from this rift and closure readings that it is not only confined
between developed and developing countries but international organization like World Bank and IMF have also their positions regarding the declaration.

From this different positions of developed and developing country as well as international organizations various kind of controversies also emerged regarding the Declarations on the Right to development, for instance, mainly two questions were raised regarding in its enforceability and justiciability. The nonbinding nature of the declaration, on the right to development is the most potent argument against the declaration as its claim of true international law. However, it important to note that if the weight of a law is measured only in the light of enforceability there is always an apprehension of losing the holistic vision of actual aim in long term. A piece of legislation is not always about the binding or imposing something on someone but it is also about putting a benchmark or setting some common or sometimes some universal standard for the society. Today one of the most celebrated piece of law in the history of human rights is the Universal Declaration of human rights sets forth a common standard of achievement although it does not intend to put forth any mandatory legal commitments. At the same time lots of misconceptions are also there regarding the declaration. There are fears like that the issue of development will take priority over the respect for human rights, however it is pertinent to mention here that the protagonist of the right to development consider that development is very much part of human rights so there is no question of setting the priority of development over human rights. There are some question like if the right to development is right of developing country against developed countries then in that case whether the developed country should give the preference to own domestic needs or the demands of the developing nations.
In this background, where the very philosophical foundations of Right to development is surrounded by above mentioned controversies then its natural corollary that the question will obviously be raised regarding its implementation and enforcement mechanism. Here it would be pertinent to mention that in this direction and open ended working group was established and the Independent Expert on the Right to Development to find a way for implementing the right to development. The Independent Expert has recommended a ‘Development Compact’ between specific developing country and the international community as well as international financial institutions as a mechanism for the implementation for right to development. The Independent Expert recommends focusing on the realization of three basic rights; Right to Food, Education and Health which can be seen as constituting core elements in the realization of the Right to Development.

To state in a nutshell, there was an attempt to map historical trajectory of emergence of human rights and how it is embedded in the discourse of development and the manner in which it creates centers of marginalized individual who are denied the basic dignity in a uneven development project, thus there was un urgent need to restore this lost dignity, this recovery was (is) possible only through re-articulations of aspirations of being human and this can be done only paying attention and addressing to the questions and concerns of right to development. Though, it is a matter of contention, whether, it should emerge from human rights declarations or it must be other way around, that is fore-grounding this narrative from the perspective of democracy and political struggles around the processes of development discourse itself.

Another distinctive aspect of thesis, probes the contours of right to development and its interlinkages between economic
globalisation and Right to development, simultaneously it shows the ideological character of globlisation and how it created the possibilities and discontents about RTD. Another factor which has engulfed the right to development is economic globalisation. In this era of economic globalization ‘The Right to Development’ of people as well as nations (developing/underdeveloped) has effected in various ways. Globalisation has become part of all aspect of human life and economic globalization essentially emerged from integration of global markets which is not only determining the economic questions in social life but it equally interfere in the realms of social, political, cultural values of life and mould them on the terms and condition which suits the global markets. No doubt in this process of economic globalization those who (nations or individual) are on the periphery always on the receiving ends in this process. However, the globalization is a process that carries possibilities and threats alike. Possibilities, because it should not be forgotten that the broadening of international markets which promises the so called growth / development. The argument of protagonist is that the integration of global market will ultimately lead to a just economic system the benefits of which ultimately will percolate down to the people on the periphery in the society. But it must be underlined that economic globalization also entails threats and risks. It also fuels the various phenomenons of exclusions. In this process the state is sidelined and there is no question of intervention by the state in the name of ‘welfare state’. The logic of market operates on the principle of exclusion that is one who can pay will get the service and others will be excluded from the market.

Another major sign of shrinking role of welfare state is reflected in terms of growing influence of transnational corporations which have grabbed an undue share in the determination of policy decision at national as well as international domain. Their influence
can be judged from the fact that the nation states are not only facilitating them but in many areas related to policy matters they take their ‘seal of approval’. The Transnational corporations are involved in human rights violations in various parts of the world either directly or with the help of local agencies, sometimes even with the help of local government. All this above instances are indicators that how in the era of economic globalization the right to development of indigenous people as well as under develop/developing states are not only affected but also determined by an outside agency. This very process reflects that how the indigenous people are not allowed to participate in the process of development rather they are driven and dominated by the notion of development which suits the transnational corporation. This is a clear cut violation of idea of participation which is one of the core principles of the right to development.

This impact of globalization is also reflected on various components of the right to development. The basic rights like right to food, education and health which are considered to be indispensable components of the right to development have also been affected by this process as never before. For instance, it has worsened the situation regarding food availability to those who cannot afford the price for it. Food exports have led to declining food security in poor exporting nation. A large part of agricultural land has been converted into malls, units of tourism industries and other signature tunes of so called development and modernization. This change of land use erodes the capability of food production. Globalization as an ideology has rapid influence on agriculture by destroying the possibility of agricultural labour and by taking away land from farmers and alluring them for profit and making them pauper. Recent violent clashes between farmers and government machinery is good enough to show how this process is supported by market and industry on the one hand and people resistance movement on the other.
Likewise education in 21st century has adversely affected in wake of privatization and policy and turning of education into a profit generating enterprises in the developing countries, it has even suffered a lot because of budgetary cuts. Similarly in case of right to health, there is increasing evidence that globalization itself will lead to greater levels of disease that is preventable and avoidable. For example the reports suggest that 90% of malaria deaths are caused by colonization of rain forest and construction of large open water schemes, both of which increase human exposure to disease carrying mosquitoes. It was observed that how the developmental work in New Delhi during Common Wealth Games in 2010 was responsible for various kinds of water borne diseases. It was alleged that the health of poor people was most affected from the above mentioned development projects.

Even India is not untouched by this global phenomenon and in last two decades it has adopted a model of development which seems to protect and promote the interests of big houses. The controversial policy regarding special economic zone is one of such example where good bye has been said to the welfare legislations for the labours. The acquisition of lands for Information technology parks etc. has done irreparable harm to the people for whom their land is primary source of livelihood. It is to be noted that the impact of economic globalization on social, economic, cultural and political aspects of life is very much visible in any society which is opened to and connected with global market. It is in this background it has to be seen that how the right to development has been denied to the people and especially the indigenous people in this whole process but at the same time it has been explored that how this very concept of right to development can give strength to the peoples movement and their resistance to this unjust and inequitable process of economic globalization.
Since the focus of this research work is the human right jurisprudence and the right to development and some of its indispensable component including food, education and health as identified by Independent Expert, Arjun Sengupta, who had laid emphasis on inclusive realization of these basic minimum need indicator as foundational components of rights as well as RTD. To begin with the first component which has been analyzed by the researcher is ‘Right to Food as an indispensable component of the Right to Development’. In this context various dimension of right to food has been explored in the context of development. It has been shown that how food is important for the realization of Right to Development. A programme of realizing right to food is closely linked to reduction of poverty. The recognition and realization of right to food is very crucial component of right to development. One cannot even dream of justice, be it social, political or economic which is not free from hunger. Until or unless any academic critical engagement with these set of issues does not adhere to right to food as one of the basic right it cannot claim to be civilized and humanitarian in ethos. Therefore right to food is considered to be closely linked with the social justice since it has close link with entitlement patterns in society. Thus, the policy and laws of any state, if it fails to provide this basic subsistence right which is the fundamental principle of social justice then that system fails even in the basic test of social justice.

As far as international scenario regarding food security is concerned, hunger today is prominent issue on the international human right agenda since every year 13 to 18 million people die out of hunger. The global food crisis is increasing day by day it has reached to such an extent in some of the countries such as Haiti where mud cakes have become staple diet for entire families. International community is very much alive to this problem of
humanity and therefore the international human rights laws ranging from Universal Declaration on Human Rights (1948) to Millennium Development Goals (2000) have responded to the problem of hunger and food security. Because of these positive responses from international human right regime the right to food has almost acquired the status of a customary law and under the international law. Although as it has been mentioned earlier that there are so many international laws which respond to the problem of hunger but these international laws are ‘soft laws’ which needs to be translated into hard domestic laws otherwise these international laws will just remain the rule of positive morality only.

Turning to the issue of food security in India it appears that it is an example of a country which is although self reliant in food production but there are reports of hunger death from every nook and corner of the country. Today the issue of food security has acquired a central place in any debate regarding human rights in India. It is matter of concern that as mentioned above there is paradoxical situation exist in India regarding food security.

At present two major claims are being generally made and it is proudly declared that India has occupied a place among the developed nations and its roots of democracy have gone deep. Among the third world countries, democracy and development have always been in the centre of any debate related to nation building. But because of various kinds of limitations of third world countries and especially in India because of its peculiar socio-economic set up meaning of democracy as well as development have taken the different dimensions. In this context there are two registers of democracy first is related with and is known as democracy of symbolism or electoral or procedural democracy. The logic of electoral democracy brings within its fold the constitutionalism,
policies, planning, institutions and agencies of the state. It is through these tools of the electoral or procedural democracy the state tries to cater the dreams of its citizens.

In India the constitution envisages to establish a society based on egalitarian norms. Constitution makes numerous kinds of promises which include the notion of the justice, equality and liberty. Some time these promises are dubbed as gesture of symbolism. While other agencies of the state make an effort to implement these promises on the ground through the framework of governance and policies. Through this procedural democracy the state creates a perpetual mirage for development and the people on the periphery continues to be in the perpetual quest for this mirage of development.

But beneath this notion and approach of development and democracy there have been the politics of selective inclusion and selective exclusion very smartly at every level. The Constitution which is talking in the language of inclusion and promises of equality, liberty and justice, which have been made under it, are not being fulfilled. Rather when it comes at the level of implementation there is institutionalized and systematic erosion of those promises and set goals of utopian society. The impaired/blurred vision of development and democracy brings within its fold only the selected few but others remain in continuous search of the mirage of development through first register of the democracy. Even after more than sixty years of democracy the benefit of development has not seep into deep down and it has yet to reach to the most needy who are standing in long queue to get their share of democracy and development.

At the same time the second register of democracy which emerges as a reaction of failure of the first register of the democracy to bring the desired fruits of development. Second register of
democracy are emanating in the forms of resistance, struggles, mass public movements and their alternative politics. These struggles are a reaction to mal-governance and not keeping the promises of Constitutional goals. There are many public movements which are emerging as a politics of resistance and struggles. The right to food campaign in India is one of such politics of resistance which has emerged on the initiatives taken by civil societies which are engaged in alternative politics of democracy and development. The right to food movement itself reflects the pitfalls of the traditional approach of the notion of development and the failure of the first register of the democracy. A close reading of the language of protests of civil societies against hunger deaths can be helpful to understand that how over the years it has created a space for political society to ensure minimum sense of social justice to the people who have been living in the margins of Indian society. And to probe these issues one has to catalogue the multiple debates those emerged out of legal interventions from NGO’s and various democratic rights groups such as PUCL (Peoples Union for Civil Liberty) and PUDR (Peoples Union for Democratic Rights) and also other social and political campaigns carried out civil society groups in broadest sense of term.

The right to food movement is story of scarcity of food and hunger deaths in country where the food grains are decaying due to negligent storage. The present status of food security is a palpable story of abject failure of state as an institution to harness the social justice. And it shows the real picture of much hyped great story of Indian development and democracy. There is a contrasting story of shining and starving India and so many India within India which again probe the point that in the electoral democracy only selected few are included in the process of development. Position of India in world hunger index reflects the cruel but true picture of its ever

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growing GDP. Because of these paradoxical situations the resistance is growing stronger and stronger. The right to food campaign constitutes an important part of struggles for development and democracy for those people who have always been on the periphery of development and democracy. The right to food is not just about getting two squares of meals in a day but food security is very much in the centre of any debate regarding development and democracy.

Ideological base for these protests are provided in the form of various theories of justice and development. For instance John Rawl and Amartya Sen respectively examining the question of food security on the basis of basic need and of capability approach, that is the freedom of choice theory. Therefore these movements draws strength from these ideological base and asserts that it constitute the base of democracy as well as development. The right to food has close link with entitlement patterns in society and their gendered nature, the disabling effects of persistent hunger, presence or absence of social safety like employment guarantee, nutrition scheme for children, degree of importance given to propriety or land rights, hunger deaths, forceful dislocation, right over natural recourses and social exclusion. All these have close relation with the quality of available social justice.

Talking about the food security is basically talking about the very basic right of human beings which is very essential for existence. Food security is one of the most important pillars of social justice. To understand this it would be pertinent to refer to the Rawls theory of social justice and in particular his basic right principle. According to Rawl’s basic right principle, people’s right to have security and subsistence are to be respected and protected as the first principle of social justice. Simultaneously it would be relevant to refer Amartaya Sen who is also talking about the “ Capability
concept that is regarding the enhancement of the capabilities of human beings so that they can strive for their basic needs and ultimately to a just society. Rawl’s theory of social justice is primarily based on five principles which are as follows:

Although The agents of procedural democracy have taken steps like mid day meals for school going children and making available food grains at very low cost through public distribution system but these initiatives have fallen flat on the ground and nowhere near the constitutional promises of establishing a social order where development will be the obvious goal of every government.

These initiatives in the form of politics of appropriation appears to be just as a mechanism for the resisting the politics of resistance from the players of second register of democracy and development. The right of food Bill, which has recently become subject matter of debate within institutional framework of Indian governance, after long drawn struggles of civil and political society and specifically after Supreme Court's intervention in forms of interim orders to ensure food-security to poverty stricken citizens in India, is latest addition in this saga of politics of resistance. As an intriguing account towards food security as a constitutive elements of right to development has become so rhetorical in annals and practices of Indian democracy, there is hardly any national event or occasion where, Indian leaders making lofty statement about food security bill, though the need of an hour is to translate these promised into action by making laws and making a viable reality.

Under the schema of the present research the next issue which has been explored is ‘The Right to Education as an indispensable component of Right to Development’. For the progress of any

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\text{For instance once again Prime Minister Manmohan Singh while addressing the nation on 15th August 2011 on the occasion of Independence Day promised the nation for early the enactment of Food Security Act.}\]
civilization the education has been considered as one of the most essential thing. In the beginning of the human civilization the needs of human being were restricted to basic needs i.e. roti, kapda aur makan (food, clothing and shelter), but as the society progressed, these basic needs have increased many fold like food, shelter, clothing, education, and health. Moreover without education a man is considered as animal. The right to development is considered to be as an interface between civil and political rights and economic, social and cultural rights. The right to education works like a catalyst which enhances the enjoyment of all other human rights. It has been pointed out in the chapter of thesis, that the solution to many human rights problems lies in recognizing that right to education is the key for unlocking other human rights. Denial of education may lead to exclusion from many levels such as labour, markets, political representation and social security schemes. The right to education is also crucial for many socio-economic issues such as right to food, right to health, gender equity and proliferation of democratic institution in any society. An educated person is better equipped not only to demand but also to access various rights. It can be summed up that there is an organic relationship between right to education and right to development. In fact one can’t think of right to development without right to education. Any meaningful effort to achieve development begins and ends with right to education.

Even at the international level right to education has been recognized as a part and parcel of international law. Beginning from United Nations charter (1945) to UN millennium development goal (2000) it has occupied an important place in these documents. There are specific UN agencies like UNESCO which are devoted to the cause of right to education. It was because of effort by international community that the declaration was made in the Jomtien World declaration and significantly the theme was ‘Education for All’. Even
in millennium development goal (2000) the right to education is one of the goal to be achieved. It is the result of the global community that today there is global acceptance to the right to education as one of the basic human rights which also facilitate the in the implantation of the Right to development.

The present status or legal entitlement regarding right to free and compulsory education is result of a long and continuous struggle by various organizations and the support which they received by the judicial activism. Although there is a long tradition of the right to education in India but in the post independent era the right to education was initially not the part of the fundamental rights under the Constitution. Right to education was part of the directive principle of state policies under the article 45 of the constitution of India. It is by way of liberal interpretation of article 21 of the constitution of India which talks about right to life. Supreme Court has declared right to education as a part of fundamental right in a path breaking case of *Unni Krishnan J.P. v. State of Andhra Pradesh*. This judgment was historic in many senses that it brought the issue of right to education once again public domain which had taken back seat after the independence. It was after this judgment the right to education movement received a kind of catalyst which increases the rate of reaction of many civil society players for this issue. This entire struggle ultimately resulted into 86th constitutional amendment in the year 2002 where by a new article 21A was related to right to education was added as fundamental rights in the constitution. However, this amendment was itself not sufficient to empower the citizens with the much desired and awaited right. Finally it was in the year 2009 when parliament passed the Act “Right of Children to free and Compulsory education Act” which came into force after the first April, 2010. However, with enactment of above mentioned Act it is not a guarantee that all the children will
reach the school. Even this Act is not a full proof and there are lots of lacunas which have been identified by the activist. Moreover, it is considered to be a good step taken in the right direction for the right cause.

Under the same theme the education policy of the government of India during the various five year plan have been examined. An effort has been made to see that how policy makers have dealt with the issue of primary education during the last eleven five year plans. Under this sub theme the researcher has tried to see how education has been taken as a base for the development of the society. In this regard the researcher tried to briefly scan the various policies and schemes of the government of India and finally made an effort to show, how these modes of engagements are linked and substantiating the promise of right to development. Apart from outlining the broader arguments concerning need and necessary links between right to development and education as a fundamental 'good' to inform the debate, researcher also noticed in the course analysis that there are structural problems in our democracy and these inbuilt inequities in our society can not be addressed unless there are struggles around basic purpose of education and long term goals and visions are being taken into account, for instance Eklavya, experiment shows how context and region and cultural diversity must be basis of education rather than uniformity and symbolism.

Another chapter in the schema of thesis explores, the theme of ‘The Right to Health as an indispensable component of Right to Development’. Under this particular head the effort has been to explore that how right to health has been identified as one of the important human rights under the various documents in international law. It has been examined that how the accessibility, availability and

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5 Eklavya is an NGO working in the field of primary education., see also: [http://eklavya.in/go/](http://eklavya.in/go/)
acceptability to the health services makes difference to the right available to people at large. In this theme, an attempt was made to explain and complicate, that how development and health are related to each other and carry internal and external interconnections, while examining the trajectories and impacts of inequitable development and issues related with public health. The research shows, that right to health cannot be ignored in poverty reduction and related plans, this right has much larger role to play. Health is a prerequisite for sustainable human development, with the direct implication for poverty reduction, social welfare, political stability and economic growth. Health and poverty has direct relations. Health can make or mar the future of any person. Ill-health affects livelihoods negatively, lowers down productivity, it can badly effect education, and narrow down the available prospects and ultimately all these can lead to poverty. On the contrary this poverty put many kinds of hindrances in the life of a person it can lead to denial of medical services because of affordability, it can force the family to send their wards for child labour, not getting the sufficient food, consequently, resulting in to malnutrition, susceptible to environmental risks, all this can lead to ill-health. Therefore, it can be said that this is a kind of vicious circle where both are cause and a consequence of each other. Therefore it can be said that human rights, human health and development have inter linkages and they affects each other in positive or negative manner. Under this theme the impact of neoliberal development programme on public health has also been examined and it has been observed that how neoliberal programmes in the era of globalization are affecting the public health services. The role of international institutions like IMF and world bank have also came under scanner that how they have been pressing and persuading the countries for budgetary cuts even for important issues such as food, health and education. Further the suggestions by World
Bank like cost recovery schemes for the states by imposition of user fees under the assumption that the health services are price elastic, therefore, it is over utilized by the citizen if provided at no cost. It also raises the issue that how health services are affected by international regimes like ‘TRIPS’ and ‘WIPO’ which is again a new tool in the hands of the market players to compel the state compliance with rigid intellectual property protection which has ultimately proved fatal for public health.

Under similar theme it has been tried to examine the promises and practices of Indian welfare state regarding the right to health. It is not a secret that the status of public health in India where even after 62 years of the enactment of the Indian Constitution which swear in the name ‘we the people’ the people of India are still by and large have been ignored in almost every sector but this is a more stark reality in the realms of public health. As far as the constitutional provisions are concerned the most of the health related rights were put in the part IV of the Constitution of India which falls in the category of non justiciable rights. However, it is by way of judicial activism and innovations the meaning of right to life under article 21 of the constitution of India has been so expanded that now right to public health and care is considered part and parcel of fundamental rights. In last more than sixty years the Supreme Court has given many path breaking judgments which have brought a new paradigm shifts regarding the whole vision related to public healthy in India. For instance now first aid is one of the fundamental rights which has to be provided by all medical service providers, right to live in a healthy environment is part of public health jurisprudence and like this there are so many new rights related to public health and these were innovated by the judiciary which were earlier not known in the Indian public health domain.
The chapter's theme also examines the consequences of commercialization of health sector in India. It has been highlighted in the research that how the private players are penetrating in the public health sector in India and how they are taking advantages of health related problems and there is an emergence health an industry. And reasons for this sad state of affairs can be located in the economic globalisation and retreat of state from providing basic human needs including health. Especially in the last two decades the Indian public health sector has been heavily intruded by the private players but the irony is reflected in paradox where the economy is growing but the public health is deteriorating. Similar kind of concern and observation, one may find in a writing of Noble winner, Myrdal\(^6\), where he says in the times of globalisation economy is doing fine but people are not, this statement is indicative enough development of few and economic growth can not be guarantee for health of marginal and subalteran citizens in third world countries.

In a contemporary pace of development and with enormity of growth driven logic, it has subsided the health of poor and basically those who constitute the larger chunk of humanity and India is not exception to this.\(^7\) The opening of the public health for private players which is fully based on cruel rule of market is basically something which militates against the idea of Indian welfare state. Under the same theme, the primary health policy of the government of India, during the various five year plans have been examined. An effort has been made to see that how policy makers have dealt with the issue of public health during the last eleven five year plans. Under this sub theme of chapter, the researcher tried to analyse, how

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\(^7\) Amit Bhaduri, *The Face you were afraid to See; Essays on the Indian Economy*, (2009).
public health has been taken as a base for the development of the society. In this regard the researcher further tried to briefly scan the various policies and schemes of the government of India and finally these policy endeavors change the health patterns of society.

After examining the three major components of the right to development the theme of the research demands to explore the relationship between ‘right to development’ and another important and contemporary issue that is the concept of ‘sustainable development’. Although the declaration on the right to development do not directly refer to the concept of sustainable development but any discussion on the right to development it is important to locate the current debates on economic growth and sustainable development. Both the concepts are significant in the human rights discourse including development. Under this theme the researcher has made an effort to find out the conceptual connection between both the concepts and underlying unity and diversity in the context of material and non-material resources. On the furtherance of these arguments and figuring out a tentative conclusion that both the concepts have shared common agenda on many issues like human rights, human as the central subject of development, both give importance to the peoples participation in the process of development, both emphasize on the cooperation among the nation and so on. Therefore, the initial presumption that they belong to different domains and have nothing to share has been found without any foundation. Under the same theme the various principle of sustainable development has been examined and tried to explore that how the principle of sustainable development is ultimately helping in the implementation of the right to development only. Moreover the principles of sustainable development like 'intergenerational equity,' 'precautionary principle' and 'polluter’s pays' are in a way facilitating the objectives of right to development only.
In fact the principles of sustainable development have been implemented in India by the higher judiciary not only to protect the environment but it also very frequently refers to the question of development also. Rather Indian judiciary has made a fine balance while deciding the issues where it has to address the conflicting interest of development and environment. Neither it has given up the issue of environment in the name of development nor has it restricted the process of development in the name of environmental protection. Because the judiciary was very clear on the issue that the concept of sustainable development is not a new name for restricting the development on the name of ecology rather the very foundation of sustainable development is based on three pillars that are international environmental law, international human rights law and internal economic laws. Whenever there arose any doubt in the mind of the court it refers back to the three basic principles of sustainable development and it came with solution for Indian society. Rather in the present scenario in India where it is a developing nation where it has to always come across in conflict with the environmental issues in the name of development, the interface between both the concepts that is right to development and sustainable development acquires a significant role in Indian scenario, where the Indian society has to adhere a process of right based approach to development which address both the issues at hand.

Another important issue which the declaration on the right development has tried to critically examine and offered explanations and that includes, question of the participation of the people in the process of the development and which is also very crucial for the implementation of the right to development. According to the declaration people are both in the centre of development as well as should get the benefit from the process of development. Although at present in most of the countries, democracy is prevailing which is
considered to be a system of governance by the people, for the people and of the people, and it is considered one of the best form of governance which ensures the public participation. However, in contemporary scenario, most of the countries which are having formal institutions of democracy facilitate only the political participation (sometime just restricted to giving vote) in the name of electoral democracy. Researcher in course of writing this thesis notices certain kind of contrast between claim of democracy and a form of democracy that takes into account, experiences of citizens who are at lower rung of hierarchy, for them substantive democracy has yet to fulfill their aspirations to make them viable citizen. Civil societies / NGO’s are trying to fill this vacuum which has come into existence because of the failure of electoral democracy to provide the forums for enough participation for the people in the processes of development. NGO’s have now gained the worldwide popularity and trying to address the various concerns of the people at various forums which are probably not addressed otherwise. In a way it can be said that the NGO’s are trying to help people to participate in the process of development.

It is in this background the researcher tried to probe that how NGO’s are facilitating in the peoples participation and the implementation of right to development. This changing role of NGO’s has also been recognized by the United Nations which says that economic and social council may make suitable arrangements for the consultation with non governmental organization. This mechanism provides a kind of forum where NGO can be consulted on various issues, this factor reflects the growing stature of NGO’s in the making of International law/policy. In last few years NGO’s have established their reputations among the people and to some extent even with states and government. These are clear indications and enough reasons for the rise of NGO’s as they addresses the issues
like good governance, lobbying and networking for various causes, as an agent of service delivery and in recent times it has been also recognized as duty bearers under international law. Now various NGO’s collaborate with organizations like UNDP and various states as a partner to achieve goals like health, environment and many other identified areas.

But at the same time the effectiveness of the NGO’s are also being evaluated worldwide. There is no doubt their works have been applauded in various areas which includes poverty eradication, empowering marginal groups, fighting for the cause of gender equity, the delivering emergency relief etc. But at the same time some very sharp pointed questions are also raised regarding the very intentions and existence of the NGO’s. It is alleged that NGO’s are motivated by several ulterior aims like commercialism and fund grabbers, lack of capability, the choices of the issues which they raise, instead of helping others they seek help from others (for funding), they talk about partnership but they themselves are looking for partners. These kinds of questions raise the challenges for the NGO’s in future. NGO’s should be willing to open up their own organizational standards such as establishment of NGO’s courts of conduct to advice of UN institutions. Ngo’s should be open to scrutiny by various organizations and public authorities.

As far as the role of NGO’s in the implementation of right to development in India is concerned it is well known fact that besides some NGO’s like OXFAM, the numbers of NGO’s which have declared their commitments to the right to development as their stated policy is very rare but at the same time it has been observed that most of the NGO’s are working either on one or other component of right to development. It is important to note that most of them insisting on right based approach to development. Moreover in recent
times India has witnessed an upsurge of public movements which is led by one or other NGO’s. Recently some of the public movements have acquired centre stage in the recent political activity. The various movements such as one led by Anna Hazare (and various others on so many different public issues) is reflection of the acceptance of (as well as resistance to these powers when government of the day feel threatened from them) role of civil societies in law making. The current developments on this issue have thrown various moral, normative and legal questions before the Indian Society regarding the role of civil society in India. In coming times Indian society will have to find an answer to these questions and the very answers will determine the future course of civil society in India.

Finally the question is that what is the present status of the right to development and some of its indispensable components. As it is clear from the research that there are various objections to the claim of right to development as human rights and generally some of the objections are raised in this regard that human rights are individualistic in nature, right holder must have some corresponding entity who carrying these duties towards right holders. As it is clear from the discussion in chapter II regarding the evolution of right to development that it was supported and promoted by basically a group of developing nations while it was opposed by developed nations led by United States of America. It’s true that declaration on right to development was adopted by the general assembly in 1986 despite the opposition from USA. It is also important to mention here that article 1 of the Declaration on the Right to Development declares right to development as human rights and the same was reconfirmed in 1993 at Vienna. But the right to development and its implementation is still an unfinished agenda, because it is still
hovering around the same controversies and misconceptions which were initially faced by it.

It is also alleged that the document is vague and obscured which do not categorically define and determine the ambit and scope of the normative value which they wants to establish as a legally binding principle. Therefore an effort should be made to translate these normative principles into some legally enforceable laws. This is equally true about the components of right to development. For instance if someone talks about right to food, right to education, and right to health as long as the source of these entitlements based on some moral or normative values which cannot be enforced legally. Meaning there by it will still be based on charity and not on the basis of a paradigm which is based on rights. Therefore it is important for the enforcement of these components of right to development that some positive laws should be enacted at the domestic level. However, this is not to argue that enactment of positive laws are a panacea for all the rights but it becomes easier for fixing the liability in case of violation of the positive rights. For instance the issue of right to food in India is still hanging somewhere between the morality and legality while right to primary education has taken at least a shape in the form of positive law. Same argument can be built for other components too. At the same time it should be clarified that more emphasis on components of right to development in any way not to suggests that the right to development as a whole is less important than its components. The importance of right to development is more important for evaluating the very process of development that whether it is confirmation with right based approach to development or not. To further elaborative suggestive arguments regarding very theme of human rights jurisprudence and right to development, researcher intends to make a suggestions those emerge from careful reading of claims and theories of above discussed themes. Since the
nature of research was primarily analytical and hermeneutical and researcher envisaged, how there is need to move from realm individuality to realms of collectivity to translate human rights to real human and social action and over right to development becomes central focus of critical engagement and explains different dimensions development paradigm. Thus one can see though, education, health and food and sustainable development happens to core of right to development but these core entitlements can becomes subject of protection of safeguard unless, there are supported by legal rules and carry a sense of institutional responsibility by institutions such as state.

Another and final suggestion researcher wish to make that legality is not sufficient resource to foreground right to development rather it offers only necessary condition and it other agents and actors in society, who may play an important role includes voices of civil society and democratic rights groups and people's movements can infuse life in realizing these fundamental aspirations of the right to development as human rights. However, these suggestions are illustrative ones; narrate the story of human right jurisprudence and right to development not exhaustive ones.

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