

# Poverty and Human Rights: Determining the Relationship on the Basis of Conceptual Frameworks

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## Introduction

The relationship between poverty and human rights is very complicated. Poverty is often hoodwinked in splendour, and often in extravagance. It is the drudgery of many people to occult their neediness from the rest. Consequently, they expedite themselves by temporary means, and every day is cast away in contriving for tomorrow. Human rights, on the other hand, are intrinsic to every human being. Everyone is entitled to the same simply because of being a human. In addition, poverty and human rights are counteractive to each other because poverty stands as a barrier before the enjoyment of human rights. Hence, to determine the relationship between them is insidious. It becomes much more destructive when the perception of poverty is accepted as '*a violation of numerous basic human rights.*' This expresses the moral intuition that, in a world rich in resource and accumulation of human knowledge, everyone ought to be guaranteed the basic means for sustaining life, and that those denied these, are victims of fundamental injustice.<sup>1</sup> This is succoured by another intuition, which is that the average opulence in most societies, and definitely so in developed countries, is more than sufficient to eradicate poverty from the face of the earth.<sup>2</sup> Although those institutions may be true, such a broad statement may fall into the so-called "*fallacy of exaggeration*"<sup>3</sup>. Again, under human rights jurisprudence, since every denial does not constitute a violation of human rights, it is a question as to an ongoing debate of international human rights literature and practice. This gap is more of ideological than historic significance.

After 1948, with the Universal Declaration of Human Rights- human rights and poverty reduction proceeded on separate conceptual tracks owing to the great influence of cold war politics. Since the mid of 1990s, there has

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- <sup>1</sup> Beetham, D. 1995. "*What Future for Economic and Social rights?*". Political Studies Association, Sheffield, vol. XLIII, at p. 44.
- <sup>2</sup> Sengupta, A. 2007. "*Poverty Eradication and Human Rights, In: Freedom from poverty as a human right – who owes what to the very poor?*". Pogge, T. (ed). Oxford, Oxford University press, at p.323.
- <sup>3</sup> Costa, Fernanda Doz . *Poverty and human rights: From rhetoric to legal obligations a critical account of conceptual frameworks*, available at: <http://socialscience.scielo.org/scielo.php?pid>, last visited on 23 October 2011.

been increasing recognition of poverty as a human rights problem.<sup>4</sup> Within the structure of United Nations this has happened particularly after the World Conference on Human Rights in Vienna in 1993, which affirmed the individuality, interdependence and interrelation of all human rights.<sup>5</sup> This was followed by several declarations and resolutions acknowledging poverty as an important human right issue.

However, international human rights practitioners still lack conceptual clarity while connecting poverty with human rights, especially from a human rights law perspective. This paper attempts to bridge this conceptual gap. The object is to analyze different conceptual frameworks, their strengths and weaknesses and to suggest which one is the most accurate approach from an international human rights law perspective.

### **Towards Conceptual Clarity: The Notions of Poverty and of Human Rights**

This is not very easy to conceptualize the notions of poverty and of human rights. This becomes acute when a transformation is made in outlook from theory to practice, since a practical rendezvous hints that a) there are significant overlaps and common objectives; as well as b) they are in fact distinct through intersecting endeavours in many cases.

The conceptualization of poverty and human rights would be smooth if the concept of the former was a clear and an unambiguous one. Hence, there is an obvious problem in '*defining poverty*'. Most definitions of poverty are arbitrary and relative, even if they are based on statistical analyses.<sup>6</sup> Most definitions are drowning up at a low level. Many people are clustered on or near poverty lines, so slight changes in the definition can remove or add people to the lists of those who are poor.<sup>7</sup> Again more practically, poverty is a specific, local, contextual experience. As "Voices of the Poor: Can Anyone Hear Us?" the compelling World Bank study puts it: "Poverty is experienced at the local level, in a specific context, in a specific place, in a

<sup>4</sup> United Nations Centre for Human Settlements. "*Cities in a Globalizing World: Global Report on Human Settlements 2001*", available at: <http://books.google.com.bd/books?id=Kk8f9E-Hcj0C&pg=PA46&lpg=PA46&dq>, last accessed on 29 June 2011.

<sup>5</sup> Vienna Declaration and Programme of Action. *World Conference on Human rights, 1993*, UN Doc A/ CONF. 157/24.

<sup>6</sup> Most of the definitions made are based on random choice or personal whim, rather than any reason or system. Unrestrained and autocratic use of authority is visible. There is no participation of the stakeholder in defining the term. No special protection is provided for comparatively vulnerable and marginalized groups. Principle of equality and non-discrimination has not been uplifted, Available at, [www.ngfl-cymru.org.uk/vtc/ngfl/sociology/poverty\\_definitions.ppt](http://www.ngfl-cymru.org.uk/vtc/ngfl/sociology/poverty_definitions.ppt), last accessed on 9 August, 2012.

<sup>7</sup> Ibid.

specific interaction.”<sup>8</sup> Human rights, on the other hand, though can easily be understood but, while linking the same with poverty issue, various unresolved questions may arise. The major questions are, whether the concept is a moral or a legal one, or how could the binding obligations be determined referring to human rights and to what extent, or who are the duty bearers and so on.

However, in spite of having such unresolved issues, the concept of poverty is moving towards human rights based vision. In the paper namely, “Poverty reduction and Human Rights: A Practice Note”, the view of United Nations Development Programme<sup>9</sup> is expressed in the following words<sup>10</sup>:

The definition of poverty is steadily moving towards a human rights-based vision highlighting its underlying multitude of causes. The increased awareness that the respect for human rights is a sine qua non for socio-economic outcomes challenges the proposition that income should be used as a good and sufficient proxy indicator for measuring poverty. UNDP’s attempt to capture the multi-dimensional nature of poverty is expressed in its efforts to develop the Human Development Index, the Gender-related Development Index, and the Human Poverty Index. These efforts have opened up avenues for more holistic approaches to poverty analysis, reduction strategies and monitoring.

### **The Concept of Poverty**

The literacy of poverty is not a new one rather bygone and broad in scope. Some of the most prominent social scientists have been trying to elucidate on the concept of poverty for more than 200 years.<sup>11</sup> The reason being that, poverty of our century is unlike that of any other. So, the view presented as regards to this is variable, for example, human poverty is more than income poverty<sup>12</sup>-it is the denial of choices and opportunities

<sup>8</sup> D. Narayan, R. Patel, K. Schafft, A. Rademacher and S. Koch-Schulte. 2000. *Voices of the Poor*. Volume 1 - Can Anyone Hear Us?, New York, published for the World Bank by Oxford University Press, at p. 230.

<sup>9</sup> Hereinafter referred as UNDP.

<sup>10</sup> UNDP.2003. *Poverty reduction and Human Rights: A Practice Note*, p.6, available at: [http://www.cities-localgovernments.org/committees/cisdp/Upload/general\\_docs/povertyreduction-humanrightsenglish%281%29.pdf](http://www.cities-localgovernments.org/committees/cisdp/Upload/general_docs/povertyreduction-humanrightsenglish%281%29.pdf), last accessed on 8 May 2012.

<sup>11</sup> Saunders, P. 2004. *Towards a Credible Poverty Framework: From income Poverty to Deprivation*. Social Policy Research Centre Discussion Paper, Sydney, University of New South Wales, n. 131, at p. 7.

<sup>12</sup> Income poverty describes a person or family who lives on or below the minimum acceptable way of life. It's most likely to occur in people who have a low income. Women, disabled and lone parents are at higher risk of being in income poverty. Changes in the economy, employment being terminated and low income can have a factor on income poverty. The income approach to poverty, which considers people

for living a tolerable life.<sup>13</sup> In the recent past, poverty was defined as insufficient income to buy a minimum basket of goods and services.<sup>14</sup> Today, the term is usually understood more broadly as the lack of basic capabilities to live in dignity.<sup>15</sup> This definition recognizes poverty's broader feature, such as hunger, education, discrimination, vulnerability and social exclusion.

However, as a matter of fact here the definition of poverty is based on capability approach only. Because in the last two decades, the poverty discourse has succumbed much beyond the income criterion, to the concept of '*well being*'. This was happened chiefly owing to UNDP Human Development Report (HDR) which was clearly influenced by Amartya Sen's 'Capability Approach', where poverty is seen as "*capability deprivation*".<sup>16</sup> To quote him<sup>17</sup>:

Poverty must be seen as the deprivation of basic capabilities rather than merely as lowness of incomes, which is the standard criterion of identification of poverty. The perspective of capability poverty does not involve any denial of the sensible view that low income is clearly one of the major causes of poverty, since lack of income can be a principal reason for a person's capability deprivation.

This approach relates the notion of poverty to the notion of '*impoverished lives*' and to deprivations in the basic freedoms i. e., both positive and negative freedom that people can and do enjoy such as the freedom to avoid hunger, disease, illiteracy, and so on. For example, the UNDP's Human development Index (HDI) is an average of three measures of

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earning less than a certain amount annually as poor, is not an accurate measure of how well people live.

<sup>13</sup> UNDP. *Human Development Report 1997: Human Development to Eradicate Poverty*, p.2. Available at: <http://hdr.undp.org/reports/global/1997/en> , last accessed on Nov 2011.

<sup>14</sup> ESCR Committee, '*Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights*' (2001) E/C. 12/2001/10, paras 7 and 8.

<sup>15</sup> Ibid.

<sup>16</sup> As per the *capability deprivation*, poverty must not be based on the criteria of lowness of income but also can be seen as a deprivation of basic capability and that will show the standard of identification of poverty. No doubt low income is main cause of poverty but lack of income is also the principle reason for a person's capability deprivation. The insufficient income is a strong predisposing factor for impoverish of life. The capability approaches to poverty are deprivation (intrinsically important whereas low income is only instrumentally significant), income is not the only instrument in generating capabilities and the impact of income and capabilities varies between communities, families and even individuals.

<sup>17</sup> Sen, Amartya, 1999. *Development as Freedom*. Oxford University Press, at p.87.

deprivation: vulnerability to death, deprivation in knowledge and lack of decent living standards.<sup>18</sup>

Recalling these aspects, Sen speaks for poverty that is concerned with basic freedoms because these are recognized as being fundamentally valuable for minimal human dignity.<sup>19</sup> This concern for human dignity motivates the human rights approach, which postulates that people have inalienable rights to these freedoms.<sup>20</sup> If someone has failed to acquire these freedoms, then obviously her rights to these freedoms have not been realized. Therefore, poverty can be defined equivalently as either the failure of basic freedoms- from the perspective of capabilities, or the non-fulfilment of rights to those freedoms – from the perspective of human rights.<sup>21</sup> Sen's theory which recognizes that deprivations in basic freedoms are not only associated with shortfalls in income but also with systematic deprivations in access to other goods, services and resources necessary to human survival and development as well as interpersonal and contextual variables.

Again, recalling the features of capability, it can be stipulated that, non-fulfilment of human rights would count as poverty when it meets two conditions- a) the human rights involved must be those that correspond to the capabilities which are considered basic by a given society; and b) inadequate command over economic resources must play a role in the casual chain leading to the non-fulfilment to human rights.<sup>22</sup>

### **The Concept of Human Rights**

Human rights are a global vision backed by state obligations and are essential for the existence of human being itself. Promotion and protection of human rights are thus legal obligations of all states in national and international sphere, as is clearly stated in articles 55 & 56 of the UN Charter.<sup>23</sup> The obligation becomes bold, when the states extend their

<sup>18</sup> There are two HPIs, one for industrialized countries and another for developing countries. Various standards are used for measuring those three dimensions and the latest includes a fourth dimension: social exclusion. UNDP. Human Development Report 2003: *Millennium Development Goals: a Compact Among Nations to End Human Poverty*. New York: Oxford University Press, 2003, p. 61.

<sup>19</sup> OHCHR. 2004. *Human Rights and Poverty Reduction: a Conceptual Framework*, New York and Geneva, p.9.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid, at p.10,

<sup>22</sup> Ibid.

<sup>23</sup> Article-56 of the *UN Charter* says all Members pledge themselves to take joint and separate action in co-operation with the UN for the achievement of the purposes set forth in Article 55. Some of the purposes mentioned under article-55 are, higher standards of living, full employment, and conditions of economic and social progress and development, solutions of international economic, social, health, and related problems; and international cultural and educational cooperation.

respect to the same by ratifying other binding international human rights instruments i.e., International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights etc.

In 1948, the Universal Declaration of Human Rights as well as the two Covenants of 1966<sup>24</sup> established that poverty is a human rights issue.<sup>25</sup> This view has been reaffirmed on numerous occasions by various United Nations bodies, including the General Assembly and Commission on Human Rights.<sup>26</sup>

Again, human rights are based on the inherent dignity of every human person. To uphold this human dignity poverty is the greatest clog. Therefore, international human rights law always emphasizes on the protection of human dignity by reducing the intensity of poverty. This is why, the rudiment definition of human rights is almost unanimous<sup>27</sup> but the purposive definition of it particularly when a link of it is expounded to poverty becomes very obscure. Whether it should be accepted as a legal or moral one- leads this hazard. There is an increasing trend to use human rights language as a legitimate moral discourse that evokes universality<sup>28</sup> and consensus of fundamental values among otherwise competing traditions on a shared minimum standard of human dignity.<sup>29</sup>

While poverty cannot be unconcealed as a denial of economic and social rights exclusively (because also civil and political rights are compromised), its connection with human rights is mainly addressed through them.<sup>30</sup> As a consequence, the discussions about whether economic and social rights create legal or moral obligations are particularly relevant to the poverty and human rights discussion. Unfortunately, this is not always diaphanous in the positions of those who worked on the issue, particularly in the UN context.<sup>31</sup>

<sup>24</sup> International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966.

<sup>25</sup> The Preamble to the 'Universal Declaration of Human rights' and the common Preamble to the 'International Covenant on Civil and Political Rights' and the 'International Covenant on Economic, Social and Cultural Rights' emphasize the importance of "freedom from want".

<sup>26</sup> For example, General Assembly resolution 55/106 of December 2000 and Commission on Human Rights resolution 2001/31 of 23 April 2001.

<sup>27</sup> Rahman, Dr. Mizanur. 2006. "Human Rights: The bridge across borders", vol-17 Journal of the faculty of Law, the DU studies, Part-F, at pp. 79-116.

<sup>28</sup> Bari, Dr. M. Ershadul. 1992. "Human Rights and World Peace", vol-3 Journal of the faculty of Law, the Du studies, Part-F, at pp.1-12.

<sup>29</sup> Rawls, J. 1996. "Political Liberalism". New York: Columbia University Press, Ch. XVIII and XX, at pp. 227-230.

<sup>30</sup> While calculating the connection of poverty with human rights, the latter should be considered as a composite one covering, economic, social, cultural, civil and political rights.

<sup>31</sup> Above note-3, at page 5.

In my study, I shall always ascribe to human rights in the legal sense, as a set of internationally legally binding norms based on international treaties and customs as well as the authorized interpretations of those instruments.

### **The Linkage between Poverty and Human Rights**

The United Nations Committee on Economic, Social and Cultural Rights defines poverty as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.<sup>32</sup> So, poverty is the absence of some social and economic phenomena principally. Hence, poverty has been and remains a constructed social and economic reality. The poor are not poor simply because they are less human or because they are physiologically or mentally inferior to others whose conditions are better off. On the contrary, their poverty is often a direct or indirect consequence of society's failure to establish equity and fairness as the basis of its social and economic relations. So, it is no more a matter of argument that there is no linkage between poverty and human rights.

Again, there is an emerging view that poverty constitutes a denial or non-fulfilment of human rights. However, does it mean that poverty is the same thing as no-fulfilment of human rights in general or should certain kinds of human rights matter in the context of poverty? If so, then how can they be determined from the rest? These are the kind of questions need to be addressed first. Though the simplest approach would be to take all embracing one i.e., to define poverty as non-fulfilment of any kind of human rights but it would not be appropriate to do so. Because for it would clearly be odd to characterize certain cases of non-fulfilment of rights as poverty e.g., denial to speak.<sup>33</sup> So, there are some clear associations that constrain the nature of the concept of poverty especially at the occasion of connecting it with human rights. Hence, we are not entirely free to characterize poverty in any way we like.<sup>34</sup>

Here, as a matter of fact, this link is to be drawn from the viewpoint of capability deprivation since the 'capability approach' is widely accepted as the conceptual 'bridge' between poverty and human rights. This congregates new variables to economics which reflects the inherent and instrumental appraisal of fundamental freedoms and human rights, indeed. While pondering the oration on poverty and human rights it shall be focused from three different viewpoints firstly, poverty itself as a violation of human rights; secondly, poverty as a cause of violation of human rights; then a human right to be free from poverty.

<sup>32</sup> OHCHR. 2008. *Human Rights, Health and Poverty Reduction Strategies*, Health and Human Rights Publication Series, Issue No, 5, Geneva, at p. 6.

<sup>33</sup> OHCHR. 2004. *Human Rights and Poverty Reduction: a Conceptual Framework*, New York and Geneva at p.5.

<sup>34</sup> Sen, Amartya. 1992. *Inequality Re-examined*, Harvard University Press, at p. 107.

## Poverty Itself as a Violation of Human Rights

This approach hails that, poverty is dissonant with human dignity on the basis of which human rights are founded. Hence, poverty is a negation of all human rights. Recognizing this approach the UNDP states that poverty is a denial of human rights and that the elimination of poverty should be addressed as a basic entitlement and a human right- not merely as an act of charity.<sup>35</sup> The same view has also been expressed by Mary Robinson in the following way:

[e]xtreme poverty to me is the greatest denial of the exercise of human rights. You don't vote, you don't participate in any political activity, your views aren't listened to, you have no food, and you have no shelter. Your children are dying of preventable diseases-you don't even have the right to clean water. It's a denial of the dignity and worth of each individual which what the universal declaration proclaims.<sup>36</sup>

So, under this approach, poverty is indisputably the most potent violation of all human rights, and constitutes a threat to the survival of the greatest numbers of the human population. As poverty has intensified in both rich and poor nations alike, the view of poverty as a human rights and social justice issue has contrived increased recognition with the passage of time.

The Office of the High Commissioner for Human Rights (OHCHR) favours that, the use of Sen's "*capability approach*" is an exact conceptualization of poverty from a human rights perspective and there is a 'natural transition from capabilities to rights'.<sup>37</sup> Under the same approach, they further added, that poverty is 'the failure of basic capabilities to reach certain minimally accepted levels'<sup>38</sup> and it is also 'the absence or inadequate realization of certain basic freedoms '<sup>39</sup>. Being so, since freedom is the common element that links the two approaches, there is a conceptual equivalence between basic freedoms and rights.

<sup>35</sup> UNDP. 2003. "*Poverty reduction and human rights: a practice note*", Available at: <http://www.beta.undp.org/content/dam/aplaws/publication-pdf> , last accessed on November 2011.

<sup>36</sup> Robinson, M. BBC News, Thursday, 21 Nov. 2002. Available at [http://news.bbc.co.uk/2/low/talking\\_point/forum/1673034.stm](http://news.bbc.co.uk/2/low/talking_point/forum/1673034.stm). Last visited on November 2011.

<sup>37</sup> OHCHR. 2004. "*Human Rights and Poverty Reduction, a conceptual framework*", New York and Geneva, available at <http://www.unhchr.ch/html/menu6/2/povertyE.pdf>, last visited on November 2011.

<sup>38</sup> Sen, A. 1992. "*Inequality Re-examined*". Cambridge: Harvard University Press, at p. 109, cited in Hunt, Nowak & Osmani, HR/PUB/04/1, 2004, p.7.

<sup>39</sup> OHCHR. 2004. "*Human Rights and Poverty Reduction, a conceptual framework*", New York and Geneva, at p. 9, available at <http://www.unhchr.ch/html/menu6/2/povertyE.pdf> , last visited on November 2011.



Again there are some difficulties in this theoretical correspondence. First, the concept of basic capabilities is contingent, while human rights are not. Second, the content of each basic capability is also contingent, while international human rights law and jurisprudence is defining universal minimum core content of rights.<sup>40</sup> Since, poverty denotes an *extreme* form of deprivation; only those capability failures would count as poverty that is deemed to be *basic* in some order of priority.<sup>41</sup> The OHCHR argues that different communities may of course have a different understanding of what would qualify as “basic” capabilities.<sup>42</sup> There is a suspicion here with the human rights discourse which jeopardizes the alleged conceptual equivalence. The “capability set” that each society will list as basic can’t be equivalent to human rights. This is because the universality of the catalogue of human rights is beyond any political discussion and communities preferences. This conflict has been recognized in an obscure way by the Office of the High Commissioner for Human Rights (OHCHR). Where it has been argued that although there is some degree of relativity in the concept of poverty from empirical observation it is possible to identify certain basic capabilities that would be common to all.<sup>43</sup> So, still there is a conceptual snare, because the human rights discourse does not claim universality based on an empirical observation rather on a moral and legal imperative.

### **Poverty as a Cause of Violation of Human Rights**

This approach marks poverty as the cause of many human rights violations, mainly economic and social, not excluding civil and political also. This approach holds that poverty socially excludes a group of people whose human rights are then systematically violated. So, here poverty is not considered as *priori* a human rights violation but a cause of human rights violations.

The Vienna Declaration has characterized *extreme poverty as a violation of human dignity*,<sup>44</sup> but avoided calling it a violation of human rights,

<sup>40</sup> The committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every state party.’ UNITED NATIONS. Committee on Economic , Social and cultural Rights. The nature of state parties obligations. *General comment* 3, UN Doc. HR1/GEN/1/Rev.1 at 45, 1990, § 1 and 10.

<sup>41</sup> Hunt, P. Nowak, M. & Osmani, S. 2004. “Human Rights and Poverty Reduction, a conceptual framework”, OHCHR, HR/PUB/04/1 at p. 7. Emphasis added.

<sup>42</sup> Ibid, p. 6.

<sup>43</sup> Ibid, p. 8.

<sup>44</sup> *Vienna declaration and Programme of action*, adopted by the World Conference on Human Rights on 25 June 1993 (UN Doc: A/CONF. 157/23). Article-25 of it states: The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to

arguably because of the reluctance of governments to accept legal responsibility. It observes that the existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights.<sup>45</sup>

However, poverty is not *per se* a violation of human rights, since there are several conceptual steps before naming poverty as a human rights violation. Philip Alston, for example, considers that poverty is a violation of human rights only to the extent that a) a government or other relevant actor has failed to take measures that would have been feasible; and b) where those measures could have had the effect of avoiding or mitigation the plight in which an individual living in poverty finds him or herself.<sup>46</sup>

Again, this is argued that, poverty can be alleviated and human rights still be violated. However, if human rights are realized there may not be any poverty. So, it would be more accurate to consider poverty eradication as playing an instrumental role in creating conditions of well-being for the rights holder.<sup>47</sup>

This approach seems to be more realistic and legally accurate than the previous one. The complexities of the phenomenon of poverty make it very difficult to assume that poverty implies human rights violations without further inquiries. With the present development of international human rights law and standards, it seems reasonable to require empirical and analytical evidence to establish that one specific deprivation, which is clearly characterized as poverty, is at the same time a human rights violation. The analytical effort needed is to prove that the state had violated a concrete human rights obligation that was feasible and could have had an impact other than negative.<sup>48</sup>

### **Human Right to be Free from Poverty**

Under this view, poverty is not reckoned as the denial of all or several human rights but the violation of one specific right<sup>49</sup>. This proposal puts light on the so called absolute/extreme poverty<sup>50</sup> and expounds that

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promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

<sup>45</sup> UN DOC A/CONF.157/24, 1993, cited in Alston, 2005, p. 786.

<sup>46</sup> Alston, 2005, p. 787.

<sup>47</sup> UN DOC : E/CN.4/2006/43, 2 Mar. 2006, §41.

<sup>48</sup> Costa, Fernanda Doz. 2008, "*Poverty and human rights: From rhetoric to legal obligations a critical account of conceptual frameworks*", *Revista Internacional de Direitos humanos*, no-9, at pp. 80-107.

<sup>49</sup> This idea came from the UNESCO's draft document '*Abolishing Poverty Through the International Human Rights Framework: Towards an Integrated strategy for the social and Human Sciences.*' Draft V. 3 , report, 2003, p. 3.

<sup>50</sup> Absolute poverty is defined as a deprivation of what is required to live a life that is worth living. See, Campbell, T. *Poverty as a violation of Human Rights: Inhumanity*

everyone has the right to the means of basic subsistence. However, in this arena, moral claim is totally different from legal one.

### **Freedom from Poverty as a Moral Human Right**

The human rights in practice and theory have been influenced greatly by the liberal tradition.<sup>51</sup> The propagators of liberalism advocated for the inclusion of freedom from poverty as a fundamental human rights concern.<sup>52</sup> However, liberalism is not the only philosophical foundation of human rights. So, in the best case scenario, poverty is not a violation of universal human rights rather a national problem of social injustice. Nevertheless, the influence of the liberal tradition in the human rights discourse cannot be denied.

In this connection, Pogge's view in '*World Poverty and Human rights*' is a major attempt to move this debate forward, locating his theory within the traditional liberal idea of negative obligations. He argues in favour of a moral human right that everyone has to a standard of living adequate for health and well-being<sup>53</sup>. He goes further to give meaning to this right, positioning that governments and citizens of affluent democracies have a negative duty towards the global poor.<sup>54</sup> Indeed, he argues that poverty in developing countries cannot be seen as disconnected from industrialized countries opulence. However, while arguing in favour of moral human right Pogge did not negate the legal human right. To quote him<sup>55</sup>:

Human rights of both kinds can coexist in harmony. Whoever cares about moral human rights will grant that laws can greatly facilitate their realization. And human right lawyers can acknowledge that the legal right and obligations they draft and interpret are meant to give effect to pre-existing moral rights. In fact, this acknowledgment seems implicit in the common phrase 'internationally recognized

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*or Injustice?* In: Freedom from poverty as a human right – Who owes what to the very poor? Pogge, T. (ed.). Oxford, Oxford University Press, 2007, page 55.

- <sup>51</sup> The indubitable values of the liberal tradition are based on the belief that individual freedom is paramount in political and social considerations, and that government power should be limited so as to interfere as minimally as possible in that freedom. It does want to ensure political, social and economic conditions which guarantee the individual the freedom to reach his fullest potential, but this is often seen in economic terms. The state, or government, was seen as an inhibiting obstacle to the full expression of economic activities, and the liberal tradition wants that obstacle removed or at least limited as much as possible, available at: <http://www.lotsofessays.com/viewpaper/1682655.html>, last accessed on 8 August 2012.
- <sup>52</sup> Blau, Judith R. and Alberto Moncada. 2005. *Human Rights: Beyond the Liberal Vision*. The USA, chapter-1.
- <sup>53</sup> Pogge, T. 2002. "*World Poverty and human rights: Cosmopolitan responsibilities and reforms*", Cambridge. Polity Press, at p. 53.
- <sup>54</sup> Ibid, p.145 and 172.
- <sup>55</sup> Ibid, p.2.

human rights'. It is clearly expressed in the Preamble of the Universal Declaration of Human Rights (UDHR), which presents this Declaration as stating moral human rights that exist independently of itself.

Amartya Sen has also contributed to the debates in ethics and political theory to quell the theoretical obstacles to view global poverty as a violation of human rights.<sup>56</sup> Sen, composes a broad theory that a) incorporates positive obligations of assistance and aid towards the global poor; and b) supports a sub-class of fundamental freedoms and human rights that focuses directly on the valuable things that people can do and be.<sup>57</sup> Unlike Pogge, Sen contests the liberal assumption that freedoms only imply negative obligations. So, he (Sen) builds a broad theory which covers positive obligations of assistance and aid towards the global poor. Hence, both Sen and Pogge have developed political and moral theories that include freedom from poverty as a major human rights concern.

### **Freedom from Poverty as a Legal Human Right**

Since, this approach is not expressly recognized in international human rights law; this is to be built from various legally binding obligations that have already been recognized. Here, while dealing with this wave, some want to cover only extreme poverty, other want to argue that the right to be free from poverty is the opposite of the right to an adequate standard of living or the right to development.

### **Legal Human Right to be Free from Extreme Poverty**

When the analysis of poverty is narrowed to extreme poverty, Arjun Sengupta<sup>58</sup>, argues that there is a legally binding obligation upon the states to end poverty.<sup>59</sup> According to him, the international community will be more willing to accept this binding obligation if there is more manageable number of people, who are clearly and demonstrably most vulnerable to suffering from all forms of deprivation.<sup>60</sup> He strengthens his position deducing that the denials related to extreme poverty are easily

<sup>56</sup> Vizard, Polly. 2006. *Pogge -vs- Sen on Global Poverty and Human Rights*, Centre for Analysis of Social Exclusion, LSE, pp.1-22, available at: [https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3357/1/2006v3n2\\_VIZA\\_RD.pdf](https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3357/1/2006v3n2_VIZA_RD.pdf), last accessed on 8 August 2012.

<sup>57</sup> Vizard, Polly. 2005. *The Contributions of Professor Amartya Sen in the Field of Human Rights*, Centre for Analysis of Social Exclusion, LSE, pp.5-8, available at: <http://eprints.lse.ac.uk/6273/1/.pdf>, last accessed on 8 August 2012.

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<sup>59</sup> UN Doc: E/CN.4/2006/43, 2 March, 2006, 41

<sup>60</sup> *Ibid*, p. 70

identified with already recognized human rights law and that poverty eradication procedures would transmute as customary law.

Thomas Pogge while editing the famous book namely, *Freedom from Poverty as a Human Right: Who owes what to the very poor?* Rightly concluded as follows:

A right to be free from extreme poverty is supported by the basic character of the interests it refers to, but also by the cheapness of its fulfilment. A case could be made that the denial of justice to the global poor is also a problem of irrationality, given that poverty eradication does not significantly affect, and perhaps enhances the national and individual self-interests of all. A right to basic resources trumps, as any other right, consequentialist and self-interested preferences, but this does not mean that, in practice, consequentialist considerations contradict pro-poor policies. On the contrary, eradication of poverty would most probably increase aggregate global welfare, and would certainly not imply an important sacrifice for anybody.<sup>61</sup>

Here, Pogge further added that, the right to basic necessities derives from a principle of humanity, understood not as charity or simple benevolence, but as a nuclear element of justice, even if justice is narrowly understood as dealing with merit and desert.<sup>62</sup> Institutionally, on the other hand, a right to be free from extreme poverty deserves constitutional standing, and arguments based on democratic disagreement and informational deficits must be rejected.<sup>63</sup> Directly, such a right commands judge to enforce it if the democratic branches fail to do so. Indirectly, it justifies a more responsive approach to legal problems, in particular, those arising from alleged violations of other legal standards (like mandated political representation) and the resistance of the victims of extreme inequality.<sup>64</sup> So, the presence of extreme poverty that may result from the absence of basic necessities is very likely to endanger the essence of justice. Hence, judiciary has to play an active and bold role in order to keep the public confidence on it.

The enumerated rights in the ICESCR are subject to resource availability and may be realized progressively.<sup>65</sup> General Comment No. 3, adopted in 1990, confirms that state parties have a “core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” enunciated in the covenant since without that, the covenant “would

<sup>61</sup> Available at: <http://books.google.com.bd/books?id=Aa7PB19Qx4MC&pg=PA254&lpg> , last accessed on 1 may 2012.

<sup>62</sup> Pogge, Thomas (eds). 2007. *Freedom from Poverty As a Human Right: Who Owes What to the Very Poor?*, Oxford University Press, p.254.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Article 2.1.

be largely deprived of its *raison detre*.”<sup>66</sup> More recently, the committee on Economic, Social and Cultural Rights began to identify the core obligations arising from the “minimum essential levels ‘of the right to food, education and health<sup>67</sup>, and it confirmed that these core obligations are “non-derogable”<sup>68</sup>. In General Comment no. 14, it<sup>69</sup> emphasizes that it is particularly incumbent on all those in a position to assist, to provide “international assistance and cooperation, especially economic and technical” to enable developing countries to fulfil their core obligations.<sup>70</sup> In short, core obligations give rise to national responsibilities for all states and international responsibilities for developed states, as well as, others that are ‘in a position to assist’.<sup>71</sup>

The United Nations General Assembly (UNGA) has resolved that extreme poverty and exclusion from society constituted a violation of human dignity. To state it exactly<sup>72</sup>:

Extreme poverty and exclusion from society constitute a violation of human dignity and that urgent national and international action is therefore required to eliminate them ... it is essential for States to foster participation by the poorest people in the decision-making process in the societies in which they live, in the promotion of human rights and in efforts to combat extreme poverty, and for people living in poverty and vulnerable groups to be empowered to organize themselves and to participate in all aspects of political, economic and social life, in particular the planning and implementation of policies that affect them, thus enabling them to become genuine partners in development.

Today almost half of the population in developing countries lives in extreme poverty, and are denied basic human rights such as the right to an adequate standard of living, including food and housing, the highest attainable standard of physical and mental health, and education. People living in poverty across the world are often socially excluded and marginalized from political power and processes. Their right to effectively participate in public affairs is often ignored. People living in poverty are subjected increasingly and disproportionately to a range of administrative and legal policy measures that seek to criminalize, penalize, segregate and

<sup>66</sup> General Comment No. 3, Para. 10.

<sup>67</sup> General Comment Nos. 11, 13 and 14 respectively.

<sup>68</sup> General Comment No. 14, para.47.

<sup>69</sup> Committee on Economic, Social and Cultural Rights

<sup>70</sup> General Comment No. 14, Para 45. The Covenant refers to “international assistance and cooperation’ in articles 2.1, 11.2, 15.4, 22 and 23.

<sup>71</sup> Committee on Economic, Social and Cultural Rights, 25th session, Geneva, 23 April-11 May 2001, Agenda item 5, para-16.

<sup>72</sup> General Assembly Resolution 53/146 on Human Rights and Extreme Poverty adopted December 18, 1992.

surveil them because of their situation.<sup>73</sup> The elimination of extreme poverty is not a question of charity, but a pressing human rights issue. Being so, states are legally obligated to realize human rights for all, prioritizing the most vulnerable, including those living in extreme poverty.<sup>74</sup>

### **Poverty as the Violation of the Right to an Adequate Standard of Living**

In purely material terms, an adequate standard of living<sup>75</sup> implies living above the poverty line of the society concerned, which according to the World Bank, includes two elements: 'The expenditure, necessary to buy a minimum standard of nutrition and other basic necessities and a further amount that varies from country to country, reflecting the cost of participating in the everyday life of society.' ICESCR General Comment 12 finds that what is 'adequate' 'is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions'.<sup>76</sup>

While ensuring the adequate standard of living, those who are poverty stricken must be treated differently in a positive manner because they are less in standard in comparison to the rest. In this connection the judiciary may take a pivotal role while upholding its verdict that is pro-poor in nature. In a recent judgment in the case namely '*Ain O Salish Kendra (ASK) and others v Government of Bangladesh and Others*<sup>77</sup>', the Supreme Court of Bangladesh has shown this type of drift. The Court held that:

Our constitution both in directive state policy and in the preservation of the fundamental rights provides that the state shall direct its' policy towards securing that the citizens have the right to live, living and livelihood. Thus our country is pledge bound within its economic capacity and in an attempt for development to make

<sup>73</sup> The Special Rapporteur's report to the sixty-sixth session of the General Assembly (October 2011)

<sup>74</sup> UNHR. Office of the High Commissioner for Human Rights. 2011. Special Rapporteur on Extreme Poverty and Human Rights.

<sup>75</sup> As per Article 25(1) UDHR, 'everyone has the right to a standard of living adequate for the health and well-being of himself and his family'. This provision sets out some of the elements of this right: a) food; b) clothing; c) housing; d) medical care; and e) necessary social services. Again, under Article 11 ICESCR, everyone has the right to 'an adequate standard of living for himself and his family'. The Committee on Economic, Social and Cultural Rights has issued several General Comments explaining the components of this right including the right to adequate housing (General Comments 4 and 7), the right to food (General Comment 12), the right to water (General Comment 15) as well as the right to social security (General Comment 19).

<sup>76</sup> ICESCR, General Comment, 12, E/C.12/1999/5, available at, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/PDF/G9942012.pdf?>, last accessed on 9 August 2012.

<sup>77</sup> Writ Petition No. 3034 of 1999, 19 BLD HCD (1999) 488.

effective provision for securing the right to life, livelihood etc. any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to live conferred by constitution.

The Indian Supreme Court speaking in this regard<sup>78</sup>, in *Shantistar Builders v. Narayan Khimalal Tatome and Others*<sup>79</sup> case held that constitutional right to life guarantees to ensure the equality of the “weaker segments of society”, and found that meeting basic needs is indispensable to the development of individuals. It is declared:

“Basic needs of man have traditionally been accepted to be three- food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, right to clothing, the right to a decent environment and a reasonable accommodation to live in. The difference between the need of an animal and the human being for shelter has to be kept in view. For the animal, it is the bare protection of body; for the human being, it has to be a suitable accommodation that would allow him to grow in every aspect physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home ... a reasonable residence is a indispensable necessity for fulfilling the Constitutional goal in the matter of the development of a man and should be taken as included in ‘life’.

In this connection, the capability approach provides a framework in which the capability to achieve a standard of living adequate for survival and development is characterized as a basic human right. Adequate nutrition, safe water and sanitation, shelter and housing, access to basic health and social services and education are the prime consideration here. The governments and other actors have individual and collective obligations to defend and support the same.<sup>80</sup>

Vizard, further justifies a broad conception of legal human rights that takes into account global poverty in several international norms<sup>81</sup> covering the regional and national ones. Again to deal with the complexities of

<sup>78</sup> About adequate standard of living, to life, to adequate food, to adequate housing, to development

<sup>79</sup> (1990) 1 SCC 520.

<sup>80</sup> Vizard, P. 2006. *“Poverty and human rights, Sen’s capability perspective explored”*. Oxford: Oxford University Press, at p.66.

<sup>81</sup> United Nations Charter, articles 55 & 56; the Universal Declaration of Human Rights, articles 1(1), 25 & 26; the International covenant on Civil and Political Rights, preamble & article 6; the International covenant on Economic, Social and Cultural Rights, preamble & articles 11, 12, 13 & 14; International Convention on the Elimination of All forms of Racial Discrimination, article 5(e); the Convention on the Elimination of All forms of Discrimination against Women, articles 11, 12, 13, 14(1-2) AND THE Convention on the Rights of the Child, articles 1, 24, 26, 27, 28 & 29. Vizard, 2006, p.143.



poverty and its implications for the enjoyment of human rights- capability approach can be used as a conceptual framework.

Vizard highlights that international human rights law and the 'capability approach' has complementary and reinforcing elements.<sup>82</sup> These elements provide the basis for a cross-disciplinary framework for analyzing poverty as a human rights issue.<sup>83</sup> Moreover, they stand out as two approaches that are concerned first and foremost with the well-being of individuals, their freedom, dignity and empowerment. So, Vizard provides an important framework and conceptual clarity to the actual links between the idea of a "basic capability set", international human rights law and international machinery for monitoring and enforcement. This is particularly important for the human rights community.

### **Poverty as the Main Concern of the Right to Development**

The demonstrated quest of the third world for development was eventually recognized by the international community in the 1986 UN Declaration on the Right to Development and subsequently reaffirmed in the Vienna Declaration of 1993, but it has not been codified in a legally binding document.<sup>84</sup> It purports to identify the relevance of development to economic, social, cultural and political spheres and gloss over the major development concern.<sup>85</sup> More broadly, this is the right to a process of development in which all human rights and fundamental freedoms are realized, and is seen as an evolving social arrangement and international order that facilitates the realization of, and actually realizes in a progressive manner, all those rights.<sup>86</sup>

The content of the right to development revolves on the idea of how to put a human rights approach in development processes. Known as the right to process to development, Article 1 of the Declaration on the Right to Development states that "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and

<sup>82</sup> Above note, 80.

<sup>83</sup> Ibid.

<sup>84</sup> United Nations. *Declaration in the Right to Development*, Adopted by the United Nations General Assembly resolution 41/128 of 4 December 1986 and *Vienna Declaration and Programme of Action*, adopted by the world conference on Human Rights on 25 June 1993 ( UN DOC : A/CONF . 157/23).

<sup>85</sup> Islam, Dr. M Rafiqul . ' *Development as a Human Right an Economic Analysis from the third world perspective*', in: Rahman, Dr. Mizanur (edited) *Human Rights and Development*, Published by Empowerment through Law of the common People, Dhaka.2002, pp. 1-16.

<sup>86</sup> Sengupta, A. " *Poverty eradication and Human rights*, In : *Freedom from Poverty as a human right- Who owes what to the very poor?*" . Pogge, T. (ed.). Oxford, Oxford University Press, 2007, page 338.

fundamental freedoms can be fully realized.”<sup>87</sup> Under the declaration the right to development includes: full sovereignty over natural resources, self-determination, popular participation in development, equality of opportunity, and the creation of favourable conditions for the enjoyment of other civil, political, economic, social and cultural rights.<sup>88</sup>

So, the right to development is a composite right to process of development. It is not only an umbrella of right, or the sum of a set of rights. The integrity of these rights implies that if anyone of them is violated, the whole composite right to development is also violated. This can be understood in terms of a ‘vector’ of human rights composed of various elements that represent various economic, social, and cultural rights as well as civil and political rights. It might be said that under the condition of poverty, in which violations of human rights has occurred under the both international covenants, it is also a violation of the right to development. That argument, for instance, is acknowledged by the General Assembly in its resolution.<sup>89</sup> It has been affirmed there<sup>90</sup> that in the full realization of the right to development, the rights to food and clean water, the right to shelter, and the right to housing are required to be fulfilled. In other words, if those rights are violated, so is the right to development.

The right to development is a human right in itself but it is also a composite right, constituted by other human right that forms the core of its content. Thus, the composite right improves, that is, is gradually realized, if some rights are improved, but no right regresses or is violated<sup>91</sup> and this is a comparative advantage of recognizing poverty as a violation of a specific but complex human right.

In this connection this is notable here that Sengupta argued in favour of considering poverty as a violation of the human right to development. While speaking in favour of right to development he added that the right to development is proposing a qualitatively different approach, in which considerations of equity and justice are primary determinants of development.<sup>92</sup> Not only that, the whole structure of development is shaped by these determinants. Sengupta also put forward that in order to reduce poverty there must have the presence of certain standards which could be found within this approach.<sup>93</sup> In the words of Sengupta:

<sup>87</sup> Above note, 84, article, 1.

<sup>88</sup> Above note, 86.

<sup>89</sup> Resolution No. A/RES/53/155, 25 February 1999

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Sengupta, Arjun. 2000. *The Right to Development as a Human Right*, Harvard, p.14, available at: [http://www.harvardfxbcenter.org/resources/working-papers/FXBC\\_WP7--Sengupta.pdf](http://www.harvardfxbcenter.org/resources/working-papers/FXBC_WP7--Sengupta.pdf), last accessed on 10 August 2012.

<sup>93</sup> Ibid.

If poverty has to be reduced, the poor have to be empowered and the poorest regions have to be uplifted. The structure of production has to be adjusted to produce these outcomes through development policy. The aim of the policy should be to achieve this with the minimum impact on other objectives such as the overall growth of output. But if there is a trade-off such that growth will be less than the feasible maximum that will have to be accepted in order to satisfy the concern for equity. This development process has to be participatory. The decisions will have to be taken with the full involvement of the beneficiaries, keeping in mind that if that involves a delay in the process, that delay should be minimized.<sup>94</sup>

So, in this connection, if a group of destitute or deprived people have to have a minimum standard of well-being, a simple transfer of income through money 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 may require generating activities that a simple reliance on the market forces may not be able to ensure.

However, the right to development, like all other human rights, has an element of 'utopianism' owing to their normative standard that cannot readily be enforced. At the same time since it implies the continuous improvement in the standard of living and economic development, it is also a goal of the UN and in many member countries. So, in this arena the scope of it, clear obligations, right holders, duty bearers etc. must be determined, which may establish a potential link between poverty and human rights.

### **Conclusion**

Thus, the dubiousness of poverty which is often identified as predicament or deprivation of well-being is a conglomeration of a bunch of denials and perhaps an enigma of international human rights law. Living in poverty is more than this, that leads the poor very often to be treated badly both by the state and society and to unclasp from voice and power in those institutions.

Hence, Human rights exist to stabilize the human from any deprivation with a legal context. So, poverty under international human rights law is seen as violation of rights i. e., economic, social and cultural as well as civil and political. This ultimately requires a legal commitment of each responsible actor and recognizes the poor people as the right holders to pursue their rights from those actors to whom the rights are due.

So, poverty is more than the material deprivation. It is a violation of human dignity, indeed. Hence, this is indisputable that there remains strong linkage between human rights violations and the complex aspects

<sup>94</sup> Ibid, at p.15.

of the phenomenon of poverty. In my view, the least accurate one is to consider poverty as a per se violation of human rights. On the other hand, to consider poverty as the violation of one specific human right is normatively feasible but ambitious one.

Again, to conceptualize poverty as the violation of human right to an adequate standard of living is the most powerful and auspicious one. This approach should be developed and human rights movement should pay attention to. The reasons being that, a) human rights law is an evolving discipline; and b) the human right movement was effective and powerful in setting far reaching goals. However, in the current state of affairs to consider poverty as a cause of human rights violations, seems to be the safest and clearest that will help reduce poverty comprehensively, in a sustainable and safe way that ultimately gift to people a life with dignity- the long cherished expectation of the whole human civilization ever.