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## Economic Rights under the UN System and the Creation of a New International Economic Order

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### ABSTRACT

In the beginning of the human rights discourse, emphasis was on civil and political rights. Later, the thrust of the discourse moved to social and economic rights. Economic rights were demanded by the developing world manifesting in the form of Permanent Sovereignty over Natural Resources and the New International Economic Order. Due to the untiring efforts of these members, economic rights are reflected, enunciated and promoted in the international human rights instruments created under the aegis of the UN. The OHCHR has an innovative approach towards the guaranteeing of economic rights. For instance, the Office has a human rights approach towards poverty alleviation. It also recognises different duty holders in promoting human rights like the Transnational Corporations apart from the governments and civil society in ensuring human rights (especially in the interlinkages on Business and Human Rights). These new approaches has transformed the promotion of economic rights. The question is whether the international economic order has benefited from the promotion and guaranteeing of the economic rights. The aim of the present article is to analyse the impact of UN efforts in promoting economic rights and its repercussions on the formation of a newer international economic order.

**Keywords:** Economic rights, United Nations, New international economic order

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## **1. Human Rights as a Phenomenon**

According to Hurst Hannum, the discourse of human rights in the post-World War era is 'the most significant accomplishment' and a 'revolutionary' discourse.<sup>1</sup> By making the States accountable for its actions, the discourse pierced through the unwielded arena of sovereignty. It seems that human rights is a domestic affair but it took an international turn with the abolition of slavery in 1926.<sup>2</sup> It was further pushed to the international domain by inclusion of Article 1.3 in the UN Charter that states one of the aims of the UN is 'promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.'

Hannum further argues that with the ratification of most of the States to major international human rights treaties and the adoption of Universal Periodic Review in 2006, human rights has truly become an international concern.<sup>3</sup> Human rights developed after the scourge of World Wars formally into a legal regime. It is still struggling to gain recognition in the domestic sphere. Like the tug of war between domestic and international debate in human rights law, an internal contestation of civil and political rights on one side and social, economic and cultural rights on the other side has caught attention of scholars.

## **2. Contesting Categories of Human Rights**

The Universal Declaration of Human Rights (UDHR) of 1948 enumerated all categories of rights<sup>4</sup> in one document. Due to the geo-political and ideological differences, two separate covenants addressed these cluster of rights. The International Covenant on Civil and Political Rights focus on civil and political rights. The International Covenant on Economic, Social and Cultural Rights deal with economic, social and cultural rights. Later, these rights were declared to be indivisible and interdependent in the World Conference on Human Rights held in Vienna in 1993.

International politics has influence over formulation of international law. The indivisibility of human rights instruments in the initial codification of human rights instruments was after the end of World War II. Despite the differences between global North and South, the UDHR considered all aspects of human rights. Anyway, it was incumbent on the members of the then General Assembly (50 in number) to address the issue of human rights according to the need of the peoples. At that time, many States were under

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<sup>1</sup> Hurst Hannum, 'Reinvigorating Human Rights for the Twenty-First Century' (2016) 16 Human Rights Law Review 409, 410.

<sup>2</sup> Convention to Suppress the Slave Trade and Slavery 1927, (adopted 25 September 1926, entered into force 9 March 1927) 60 League of Nations Treaty Series 253 (Slavery Convention).

<sup>3</sup> Hannum (n 1) 411.

<sup>4</sup> Rights in the international human rights instruments are classified into civil, political, economic, social and cultural rights. Lately, solidarity rights as third generation rights have also been in the human rights discourse.

colonisation. A Western influence on UDHR<sup>5</sup> is still raised despite its influence on various Constitutions and adjudication processes of the world. It cannot be denied that Western influence remains in the human rights treaties, but the significance of UDHR as a milestone in International Human Rights Law needs to be recognised.

Further, international human rights treaties reflect the geo-politics of contemporary times.<sup>6</sup> The Western bloc led by the USA and the Eastern bloc led by the USSR asserted their opinions in creating the two covenants of 1966.<sup>7</sup> The Western bloc stood for capitalism and free market. Hence, believed in non-intrusion of State in economic, social and cultural rights. Wealth re-distribution is considered as an intrusion in individual liberty.<sup>8</sup> Capitalists believe that emphasis on civil and political rights is imperative and other rights will place in order. On the other hand, the eastern bloc stood for socialism. The duty of State to set standards to ensure economic, social and cultural rights was the idea behind Socialism. Since, economic, social and cultural rights are positive rights, investment of State's resources are required to ensure them. Hence, the two blocs argued for separate covenants, thereby creating them.

The indivisibility of human rights was again emphasised in the Proclamation of Tehran in 1968. Post-Cold War, States again met in Vienna for the World Conference on Human Rights in 1993. The Conference was a breakthrough event in the history of International human rights because 171 States joined. Participants included previously colonised States. Also, the end of cold war, though dominated by the US policies is largely multipolar in nature.<sup>9</sup> The Conference dealt with a plethora of issues like poverty, genocide etc. confronted by the international community then (and continues to do so). The participant States came up with a comprehensive document titled 'Vienna Declaration and Programme of Action'. It declares, 'All human rights are universal, indivisible and interdependent and interrelated.'

The interdependence and indivisibility of human rights is reiterated in World Summit on Human Rights in 2005 and the General Assembly Resolution (60/251 dated 15 March 2006) establishing the Human Rights Council. Thus, it is clear that international politics has affected the formulation of international human rights law. It is obvious because of the interlinkages of State parties and their role in creating international law. Nevertheless, Richard Falk considers this a negative trend for development of human rights law:

The promotion of values at the expense of interests is a dangerous indulgence in international political life that often is likely to intensify conflict among states without really helping the victims of human rights abuses.<sup>10</sup>

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<sup>5</sup> Richard A Falk, 'A Half Century of Human Rights: Geopolitics and Values', Richard Falk, Hilal Elver and Lisa Hajjar (eds), *Human Rights*, vol 1 (Routledge 2008) 64.

<sup>6</sup> *ibid* 58.

<sup>7</sup> Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development* (Clarendon Press 1995) 16.

<sup>8</sup> *ibid* 11.

<sup>9</sup> Many States emerged economically thereafter including India and China.

<sup>10</sup> Falk (n 5) 58.

It is true that human rights should not be kept at stake due to international politics. Human rights itself should be considered as a value which should be adhered by all States.<sup>11</sup> The interlinkages with international politics has left human rights issues unaddressed at times.

Due to the vested interests in international politics, various human rights (in the context of present article, economic rights) are still not ensured in many States of the world. Economic, social and cultural rights 'remain largely ignored' in practice.<sup>12</sup> However, past few years have witnessed the 'enhanced status' of economic, social and cultural rights due to voice raised by developing nations.<sup>13</sup> For focusing on implementation of human rights, a question of segregation or integration arises. Scrutinising them thoroughly, some civil and political rights also require positive steps of the State. For instance, to ensure a fair trial, development of judicial infrastructure is necessary. Hence, civil and political rights cannot be always termed as negative rights. At times, the differences between group of rights is 'a matter of emphasis'.<sup>14</sup> It is agreed that human rights are interdependent, but focus on each category of human rights is necessary for proper implementation. A cluster of rights in international instruments does not address the plurality which exists in all societies.

In addition to the above, a State level approach is not enough to address the abuses but they should be looked at from other non-State actors' responsibilities. In this regard, the UN system has played a vital role in including other non-State actors. First, inclusion of non-State actors like transnational corporations, civil society, individuals etc. is urgent. Human Rights activists have principally focussed on the failure of States to protect human rights without scrutinising the causes of such incidents.<sup>15</sup> Therefore, it is necessary to ponder over the causes of human rights violations. Secondly, the projection of human rights as only rights based is not enough. Due to such depiction, Marxist critique labels human rights as class rights. Marxists consider that human rights are 'not sufficiently grounded in the material and cultural reality of particular groups'.<sup>16</sup> They also remind us of the jural correlative of duties along with the rights. Rights cannot exist without corresponding duties. Similarly, the ancient Indian law is known as dharma. Dharma largely focusses on duties over rights.<sup>17</sup> Human Rights should be based on traditions and imbue ideas like dharma while focussing on duties along with rights. Thirdly, universalisation of human rights norms should not be the aim whereas international law and human rights here shall inculcate diversity. Without diversity, uniformity would lead to anthropocentrism and consequent oppression. This is realised lately by the international community largely due to the plethora

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<sup>11</sup> Yasuaki Onuma, *A Transcivilizational Perspective on International Law: Questioning Prevalent Cognitive Frameworks in the Emerging Multi-polar and Multi-civilizational World of the Twenty-First Century* (Brill/Nijhoff 2010) 370.

<sup>12</sup> Craven (n 7) 9.

<sup>13</sup> Theo van Boven, 'Categories of Human Rights' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (OUP 2018) 135.

<sup>14</sup> Craven (n 7) 15.

<sup>15</sup> Rajni Kothari, 'Human Rights A Movement in Search of a Theory' in Richard Falk, Hilal Elver and Lisa Hajjar (eds), *Human Rights*, vol 1 (Routledge 2008) 170.

<sup>16</sup> R Panikkar, 'Is the Notion of Human Rights a Western Concept?' (1982) 30 *Diogenes* 75, 86.

<sup>17</sup> MP Singh, 'Human Rights in the Indian Tradition: An Alternative Model' [2009] *NUJS Law Review* 145, 153.

of instruments introduced to address specific human rights issues. Hence, a bottom up approach is inevitable because at international level, aggregate concerns at State level are questioned whereas the nuances of issues concerning various societies go unaddressed. Social movements can play a crucial role in the bottom up approach in human rights.<sup>18</sup>

Oversight of diversity within States can lead to disruption of peace within and outside States. Diversity and its interplay with human rights treads to the heated debate on universalism versus relativism/particularism. It has been addressed in plethora of scholarly contributions.<sup>19</sup> One of the solutions to the debate is to enter a dialogue. In R Panikkar's words, 'a mutual fecundation of cultures is a human imperative of our times'.<sup>20</sup> These changes would improvise the human rights law. Human rights law has been dynamic since its inculcation in the post-World War II era. Despite some downsides, the efforts of UN with regard to economic rights reflect positivity towards creation of a newer international economic order (newer IEO).

### 3. Newer International Economic Order

International Economic Order initially was bilateral in nature. After the formation of international financial institutions, the era of multilateralism began. In 1973, the Bretton Woods System failed. Consequent to the challenges posed thereto, the newly decolonised States raised the need for a New International Economic Order. The primary reason for the claim was disparities in the world.<sup>21</sup> In the recent past, world witnessed financial crises like Asian Financial Crises and the Recession in 2008. After 2008 crisis, some scholars again proposed revival of demand for NIEO.<sup>22</sup>

Recession led to the realisation that instead of an international approach, a regional focus on finance can bring stability. This manifested in the form of BRICS, Trans-Pacific Partnership and other similar initiatives. Despite the economic growth shown by some decolonised and developing economies, the international economic order has not favoured them much.<sup>23</sup> In other words, the New International Economic Order remain largely unaccomplished.

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<sup>18</sup> B Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (CUP 2003).

<sup>19</sup> Yash Ghai, 'Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims' in William Twining (ed), *Human Rights: Southern Voices* (Cambridge University Press 2009); Surya P Subedi, 'Are the Principles of Human Rights 'Western' Ideas? An Analysis of the Claim of the 'Asian' Concept of Human Rights from the Perspectives of Hinduism' (1999) 30 *California Western International Law Journal* 45; Karen Engle, 'Culture and Human Rights: The Asian Values Debate in Context' (2000) 32 *NYU Journal of International Law & Politics* 291.

<sup>20</sup> Panikkar (n 16) 100.

<sup>21</sup> M Bedjaoui, *Towards a New International Economic Order* (H&M 1979).

<sup>22</sup> Vinod K Aggarwal and Steve Weber, *The New New International Economic Order* [2012] 4 *Harvard Business Review* <<https://hbr.org/2012/04/the-new-new-international-econ>>.

<sup>23</sup> Fan He and Qianlin Ye, *World Economic Order: Present And Future* (Center for Strategic and International Studies 2017) <<https://www.csis.org/world-economic-order-present-and-future>>.

In this background, the author proposes a newer international economic order. This proposal emphasises that the international economic order can change by emancipating the people deprived of economic rights. As discussed in latter sections of the article, NIEO mentioned ensuring human rights to change the economic order. However, it was a period largely focussing on States as actors in international relations and did not pay heed to non-State actors.<sup>24</sup> For instance, as discussed in the penultimate section of the article, transnational corporations need to understand their duties as stakeholders in protection of human rights. The major issue that call for a newer international economic order is the disparities between the rich and the poor. This has led to incessant poverty in developing as well as in developed States. The guaranteeing of economic rights is a promising step towards eradication of poverty.

#### **4. Economic Rights under the UN System**

Economic rights are not defined per se. Most scholars have used economic and social rights together while discussing the economic, social and cultural rights in international human rights law.<sup>25</sup> William F Felice includes rights to property, work and social security within the ambit of economic rights and categorises the right to adequate standard of living as a social right.<sup>26</sup> Nevertheless, the present study understands adequate standard of living in economic terms and includes it as an economic right. Right to housing/property is a part of standard of living and hence, can be categorised as an economic right. Many instruments articulated under the aegis of UN elucidate economic rights.

The UN system has brought to light some of the economic rights which are integral to human existence. The first international human rights instrument is the Universal Declaration of Human Rights (hereafter UDHR).<sup>27</sup> It cannot be termed as hard law, yet it became the foundation of human rights for various constitutions and international human rights treaties. UDHR enunciates some important economic rights like the right to own property,<sup>28</sup> right to social security,<sup>29</sup> right to work<sup>30</sup> and the right to adequate standard of living.<sup>31</sup>

The International Covenant on Economic, Social and Cultural Rights (hereafter, ICESCR) adopted in 1966 (entered into force in 1976) directly points out some of the economic rights in detail. These are similar to the ones mentioned in the UDHR. The

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<sup>24</sup> BS Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 *International Community Law Review* 3, 24.

<sup>25</sup> Craven (n 7).

<sup>26</sup> William F Felice, 'International Political Economy and Economic and Social Human Rights' in Richard Falk, Hilal Elver and Lisa Hajjar (eds), *Human Rights*, vol 1 (Routledge 2008) 303.

<sup>27</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

<sup>28</sup> Art 17.

<sup>29</sup> Art 22.

<sup>30</sup> Arts 23 and 24.

<sup>31</sup> Art 25.

economic rights in ICESCR are right to self-determination and natural resources,<sup>32</sup> right to work,<sup>33</sup> right to just and favourable conditions of work,<sup>34</sup> right to form trade union for promotion of economic interests,<sup>35</sup> right to social security<sup>36</sup> and right to adequate standard of living.<sup>37</sup>

Apart from these instruments, the Convention on the Elimination of All Forms of Racial Discrimination,<sup>38</sup> the Convention on the Elimination of all forms of Discrimination against Women,<sup>39</sup> the Convention on the Rights of the Child<sup>40</sup> and the Convention on the Rights of Migrant Workers<sup>41</sup> enunciate economic rights.

Amongst the aforementioned economic rights, the right to adequate standard of living has vast ambit. Adequate standard of living means a person is living above the poverty line.<sup>42</sup> Right to food, water, housing and health are integral parts of an adequate standard of living. These rights are related to other economic rights like the rights to work, and social security.

About a billion people suffer from hunger. Fulfilling their food requirements is incumbent on States and non-State actors. In economic terms, housing is a private good,<sup>43</sup> but in the context of human rights, States have obligation towards ensuring non-discrimination in access to housing. John Locke, in his description on Social Contract theory mentions the right to property among the three natural rights namely, life, liberty and property.<sup>44</sup> The right to property here is interpreted as an economic right. Thus, homelessness (and the consequent violations of right to health, food etc.), forced evictions violate the right to housing. Similarly, right to health is a component of adequate standard of living. The State cannot ensure health to all as it is dependent on external factors like genetics, accident etc. Nevertheless, it is incumbent on the State to ensure 'a right to the

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<sup>32</sup> Art 1.

<sup>33</sup> Art 6.

<sup>34</sup> Art 7.

<sup>35</sup> Art 8.

<sup>36</sup> Art 9.

<sup>37</sup> Art 11.

<sup>38</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, enter into force 4 January 1969) 660 United Nations Treaty Series 195 (ICERD).

<sup>39</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, enter into force 3 December 1981) 1249 United Nations Treaty Series 13 (CEDAW).

<sup>40</sup> Convention on the Rights of the Child (adopted 20 November 1989, enter into force 2 September 1990) 1577 United Nations Treaty Series 3 (Child Convention).

<sup>41</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, enter into force 1 July 2003) 2220 United Nations Treaty Series 3 (Migrant Convention).

<sup>42</sup> Asbjørn Eide, 'Adequate Standard of Living' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press 2018) 188.

<sup>43</sup> *ibid* 193.

<sup>44</sup> Craven (n 7) 11.

highest attainable standard of health'.<sup>45</sup> Moreover, the right to health as a human right includes availability, accessibility, acceptability and quality of health care facilities.<sup>46</sup> The right to social security helps in enhancing the standard of living. Social security provided by the State is in the form of cash transfer programmes like widow pension, girl child scholarship etc.

Economically, prosperity of a person is considered a result of efforts whereas poverty is associated with indolence.<sup>47</sup> Basic human needs are linked to income obtained from work, existing resources or social security. Here arises the duties of individuals as well as States. State's obligation surrounds facilitating access to resources, preventing and penalising adulteration of food, and providing social security.<sup>48</sup> Hence, the exertion on the part of individual is also a necessary part of attaining this economic right of adequate standard of living. The State's help is definitely necessary to check widening inequalities and unjust enrichment of one over the other.

Economic rights are considered 'non-justiciable'.<sup>49</sup> National laws are largely connected to civil and political rights, as they are justiciable in courts of law. Human rights are generally directives to the State. In Constitutions like those of India, Nepal, Ireland etc., the Constitutions include some economic, social and cultural rights and consider them as directive principles to the State. Since, these rights depend on the State's financial capabilities they require time for ensuring them. In the case of India, the judiciary at times link economic rights to the fundamental rights for their better implementation. For instance, according to the Supreme Court of India, right to life includes right to livelihood.<sup>50</sup> Nevertheless, economic, social and cultural rights remain non-justiciable in most of the legal systems (including in India most of the economic, social and cultural rights are non-justiciable). This hinders 'socio-economic justice'. In this regard, Geeta Pathak Sangroula strongly argues breaking the generation theory of human rights to fully ensure human rights by making them justiciable irrespective of the generations.<sup>51</sup>

Protection of economic rights require national legislations. In the garb of sovereignty, States avoid some rights. Therefore, international pressure is required for implementing such rights by the States and non-State actors as well. The United Nations has been working in this regard. Theo van Boven claims that the UN supervisory mechanisms have raised the

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<sup>45</sup> Eide (n 42) 195.

<sup>46</sup> UN Committee on Economic, Social and Cultural Rights, 'General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant)' (11 August 2000), CESCR E/C 12/2000/4.

<sup>47</sup> Felice (n 26) 304.

<sup>48</sup> Eide (n 42) 189.

<sup>49</sup> Craven (n 7) 10.

<sup>50</sup> *Olga Tellis v Bombay Municipal Corporation* [1986] AIR 180.

<sup>51</sup> Geeta Pathak Sangroula, 'Breaking the Generation Theory of Human Rights: Mapping the Scope of Justiciability of Economic, Social and Cultural Rights with Special Reference to the Constitutional Guarantees in Nepal' [2013] Special Issue, Kathmandu School of Law Review 1.

level of economic, social and cultural rights (ESCR) at par with civil and political rights.<sup>52</sup> Appreciation of the untiring efforts of UN on ESCR is inevitable. Nevertheless, due to the power wielded by the USA, neo-liberal ideas as well as globalisation,<sup>53</sup> uniform realisation of economic rights is not visible. Due to globalisation the State's ability to control 'economic outcomes' is affected seriously leading to neglect of economic rights.<sup>54</sup> Such neglect leads to 'structural injustice and the lack of protection for the most vulnerable'.<sup>55</sup> The globalist viewpoint oversees the 'structural dimension of the world economy that plays a significant role in the creation of hunger and deprivation'.<sup>56</sup> Manifestations of inequality and poverty are increasing at an unprecedented rate. Hence, expediting efforts of UN along with the efforts at national level and obligating the non-State actors can ensure economic rights. For this, equity and equality shall be the bases.<sup>57</sup>

The United Nations Committee on Economic, Social and Cultural Rights periodically reports on the status of implementation of ICESCR by the State parties. This reporting has been 'innovative and effective'.<sup>58</sup> Some State parties accepted the Optional Protocol to ICESCR (adopted by the UN General Assembly in 2008). It grants individuals or groups to complaint against their State's failure to guarantee the rights under ICESCR.

The United Nations Human Rights Council (UNHRC; earlier, the Commission on Human Rights) has produced many reports on human rights aspects, largely on specific issues concerning human rights. The efforts towards ensuring economic rights include extreme poverty and human rights (1998), effects of foreign debts on human rights (2000), business and human rights (2011), the promotion of a democratic and equitable international order (2011).<sup>59</sup>

The Office of the UN High Commissioner for Human Rights (OHCHR) promotes and protects human rights. One of the mandates of the Office is to promote the right to

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<sup>52</sup> Boven (n 13) 140.

<sup>53</sup> Some scholars argue that globalisation brings development. It is not proved through facts that globalisation accentuates economic growth. States like Japan, South Korea, Singapore attained development through industrial growth accompanied with protectionism: Manuel Montes and Vladimir Popov, 'Bridging the Gap' in Craig Calhoun and Georgi Derluguian (eds), *Aftermath: A New Global Economic Order?*, vol III (NYU Press 2011) 124.

<sup>54</sup> Felice (n 26) 317.

<sup>55</sup> *ibid* 305.

<sup>56</sup> *ibid* 307.

<sup>57</sup> *ibid* 324.

<sup>58</sup> Craven (n 7) 1.

<sup>59</sup> UNOHCHR 'The Guiding Principles on Extreme Poverty and Human Rights' (18 July 2012) UN Doc A/HRC/21/39; UNHRC 'The Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights' (13 June 2013) UN Doc A/HRC/RES/23/11; UNHRC 'Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (21 Mar 2011) UN Doc A/HRC/17/31; UNHRC 'Report of the Independent Expert on the Promotion of a Democratic and Equitable International Order' (12 July 2016) UN Doc A/HRC/33/40.

development, significant in the context of economic rights.<sup>60</sup> In this regard, it took steps towards ‘integrating human rights in development and economic sphere’.<sup>61</sup> The OHCHR prioritises Declaration on Right to Development, 1986 and the Sustainable Development Goals, 2015. The language of the human rights instruments described in the present section have similarities to the New International Economic Order envisaged in the twentieth century by the developing States.

## **5. Economic Rights and NIEO**

The economic order created by the Bretton Woods benefited the developed States. The newly decolonised States were disappointed by the economic terms imposed on them. The General Assembly Resolution adopted the Declaration on the Establishment of a New International Economic Order.<sup>62</sup> The Resolution demanded lessening of gap between the developed and developing countries by co-operation. This would accelerate the ‘economic and social development’ of the present and future generations. It called for active participation of all countries in solving world economic problems. It emphasised the right of each country to adopt economic and social system as befitting its conditions. It asserted observance of foreign investment agreements in good faith. It reiterated the demand on Permanent Sovereignty over Natural Resources (PSNR).<sup>63</sup>

In 1974, the Charter of Economic Rights and Duties of States was prepared in the light of NIEO Resolution.<sup>64</sup> The Charter demands the basis of international economic relations to be ‘sovereign equality, mutual and equitable benefit and the close interrelationship of the interests of all States’. It describes one of the fundamentals of economic relations as ‘respect for human rights and fundamental freedoms’. Amongst the economic rights in Chapter II, Article 2(b) it claims the right to ‘regulate and supervise the activities of transnational corporations within its national jurisdiction’. Article 7 imposes the duty on States for economic development of its people.

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<sup>60</sup> UNGA Res 48/141 (10 December 1993) UN Doc A/RES/48/141, para 4(c).

<sup>61</sup> Jane Connors, ‘United Nations’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press 2018) 401.

<sup>62</sup> Declaration on the Establishment of a New International Economic Order, UNGA Res 3201 (1 May 1974) UN Doc A/RES/S-6/3201.

<sup>63</sup> Permanent Sovereignty Over Natural Resources, UNGA Res 1803 (XVII) (14 December 1962). It is pertinent to note in the context of present article that the UNGA resolution on PSNR demanded ‘regulation and supervision of the activities of transnational corporations’.

<sup>64</sup> Charter of Economic Rights and Duties, UNGA Res 29/3281 (12 December 1974) UN Doc A/RES/29/3281.

The UNGA Resolution 32/130 dated 16 December 1977 overtly links NIEO with human rights as follows:

The realization of the new international economic order is an essential element for the effective promotion of human rights and fundamental freedoms and should also be accorded priority.<sup>65</sup>

The UNGA Resolution adopted the Declaration on Right to Development.<sup>66</sup> It considered development as an 'economic, social, cultural and political process'. Thus, it gave a comprehensive interpretation of the term development. Article 8 demands for participation of women in the development process.<sup>67</sup> One significant connection drawn by the declaration is between disarmament and development, thereby demanding to divert the expenditure on weapons towards development.<sup>68</sup> World arms race is increasing at an unprecedented rate so that in fledging weapons power, States have compromised development. The declaration again reminds the international community that protection and promotion of human rights should leap forward in establishing NIEO.<sup>69</sup>

These UNGA resolutions reverberated the numerical strength of third world newly decolonised nations of the twentieth century. They asserted sovereign equality for granting economic rights to their citizens by attaining true development. They wanted freedom from the inequalities of the economic order created by the Bretton Woods Institutions. Even though their voice was suppressed by the forces of neo-liberalism and globalisation, but their efforts did not go unnoticed. The economic rights under the UN System as mentioned in the previous section echoes the words of the UNGA declarations discussed here. Hence, it is clear that if the UN efforts continue in an expeditious pace towards attaining economic rights, it can truly create a Newer IEO. Poverty alleviation and active role of transnational corporations focussed by the UN are significant in the context of the present article.

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<sup>65</sup> Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, UNGA Res 32/130 (16 December 1977) UN Doc A/RES/32/130.

<sup>66</sup> Declaration on the Right to Development, UNGA Res 41/128 (4 December 1986) UN Doc A/RES/41/128.

<sup>67</sup> Women constitute half of the population of the world. Yet, international law reflects the rules of men. Women have been largely ignored in the process of law-making nationally and internationally. When it comes to human rights, the fight to attain rights on the part of women is not against the State per se but against men: Hilary Charlesworth, 'Human Rights as Men's Rights' in Julie Peters and Andrea Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 103. With regard to economic rights, there is a clear division between the public and private sphere. Many of the women of the world do household work that is not considered as work at all. By dividing work into two spheres viz. public and private, women's contribution to the economy is nullified: Charlesworth (n 67) 107. Hence, the economic rights in human rights treaties must be considered in a broader perspective so as to include the work done by women as contributing to the world economy. Hence, women's participation in the development process is inevitable and their economic rights in this context is crucial.

<sup>68</sup> The Charter for Economic Rights and Duties Resolution also calls for this diversion of investment on weapons for development in Ch II, Art 16.

<sup>69</sup> 'Sovereign equality, interdependence, mutual interest and co-operation among all States' shall be the bases of NIEO (Art 3).

## **5. Poverty Alleviation to Ensure Economic Rights**

Economic rights have direct bearing on poverty alleviation. Rights to work, adequate standard of living, food, housing, health are economic rights, which if ensured, will eradicate poverty. The Committee on Economic, Social and Cultural Rights declared in 2001, 'poverty constitutes a denial of human rights'.<sup>70</sup> Hence, the Committee suggests a human rights approach to poverty eradication. Like the Declaration on Right to Development, the Committee also emphasises on women empowerment as a prerequisite for eradication of poverty. It links poverty to deprivation of indivisible and interdependent human rights viz. economic, social, cultural, civil and political rights. The Committee suggests inclusion of those affected by poverty in the decision-making processes on poverty eradication. The Committee's arguments (para 21) are similar to that of the arguments of NIEO proponents:

It is imperative that measures be urgently taken to remove these global structural objectives, such as unsustainable foreign debt, the widening gap between rich and poor, and the absence of an equitable multilateral trade, investment and financial system.

Consequent to the request by Committee on Economic, Social and Cultural Rights in 2001, the OHCHR released 'Human Rights and Poverty Reduction: A Conceptual Framework' in 2004. It lays down guidelines for poverty reduction through a human rights approach. It also equates 'poverty as non-fulfilment of any kind of human right'.<sup>71</sup> It instructs empowering the poor and 'expanding their freedom of choice',<sup>72</sup> accountability, non-discrimination and equality. It reiterates the Committee's opinion in 2001 to include the poor in decision-making processes.<sup>73</sup> Most significant amongst the suggestions is that while States transact with each other, they should 'avoid policies and practices that make it more difficult for that Government to conform to treaty obligations it owes to individuals and groups within its jurisdiction'.<sup>74</sup> If these treaty obligations are considered seriously, then States should not put forth unequal conditions and hinder assurance of economic rights to its peoples. The guidelines also suggest empowering the developing countries in active participation in negotiations involving poverty and duty binding the TNCs for fulfilment of human rights obligations of States.<sup>75</sup>

It is clear from the above discussions that it is not possible just to instruct States to end poverty without considering the difficulties of 'competing rights or the complexities of

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<sup>70</sup> UNCESCR 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights' (4 May 2001) UN Doc E/C.12/2001/10, 23 April–11 May 2001, para 1.

<sup>71</sup> UNOHCHR 'Human Rights and Poverty Reduction A Conceptual Framework' (2004) HR/PUB/04/1 5.

<sup>72</sup> *ibid* 14.

<sup>73</sup> *ibid* 18–19.

<sup>74</sup> *ibid* 15.

<sup>75</sup> *ibid* 31.

macroeconomic policy'.<sup>76</sup> Here comes the role of non-State actors. In the globalised world, the economic powers exercised by transnational corporations, at times exceed that of States. Hence, bringing the TNCs in loop with human rights protection can help ensure economic rights.

## 6. Obligating Transnational Corporations

Some scholars believe that foreign investments help in ensuring human rights whereas the others argue that foreign investment leads to human rights violations. The second view is largely supported by the fact that many transnational corporations violate human rights. Since TNCs focus on profit, instances of transfer of wealth from Least Developed Countries are evident rather than transferring benefits to them.<sup>77</sup> Activities of transnational corporations have percolated many spheres of human activity ranging from transport, food, appliances used in day-to-day lives, so on and so forth. The direct linking of TNCs to human activities has link to human rights violations in a plethora of situations like flouting the minimum labour standards, affecting the right to healthy environment, etc. Their involvement has also reached such a level that at times they substitute the powers of State. For instance, involvement of corporations in fighting war in places like Afghanistan by recruiting soldiers who do not even belong to the nationalities of the belligerent nations.

Corporations have in the past, violated human rights. Slave trade was a part of the corporations that catalysed colonialism. In the present scenario, violation of human rights by TNCs is a notable issue because of the discourse that TNCs are good for development. It is true that they have the potential to expedite development of the global South since most of the corporations are in the global North.<sup>78</sup> They can do so by transfer of technology. Corporations solely aim at maximising profits like most of the corporations in the history of humankind. At present, profit continues to be the aim but the discourse has changed in a subtle way. Earlier, the corporations like the British East India Company in India projected one of its aims as civilising the conquered. Similarly, now the corporations are supported to bring development to the global South. Due to the assertiveness of the human rights discourse, the exploitation by TNCs do not go unnoticed. Hence, human rights do not remain a rights oriented discourse whereas it is concerned with the jural correlative of duties. It brings into light the duties of States as well as other entities like transnational corporations in ensuring human rights. For creation of a newer IEO, State and non-State actors have to come together in fulfilling human rights obligations.

Allegations against transnational corporations for violation of human rights has led the OHCHR to come out with Guiding Principles on Business and Human Rights in 2011. An earlier attempt to link business and human rights was made by the then Sub-Commission on

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<sup>76</sup> Hannum (n 1) 434.

<sup>77</sup> Felice (n 26) 308.

<sup>78</sup> Jernej Letnar Čerňič, 'Corporations and Human Rights: towards Binding International Legal Obligations?', in Manoj Kumar Sinha, *Business and Human Rights* (Sage Publications 2013) 11.

the Promotion and Protection of Human Rights in 2003. It adopted 'Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights'.<sup>79</sup> The norms were not implemented per se but persuaded the Secretary General to appoint a Special Representative for Business and Human Rights. The Special Representative's efforts resulted in the Guiding Principles on Business and Human Rights in 2011. The Guiding Principles were not meant to impose legal obligations on business to ensure human rights. Therefore, NGOs were not satisfied with the report.<sup>80</sup> Nevertheless, to look after the adherence to these principles, the Council appointed a Working Group in 2011.

The Guiding Principles on Business and Human Rights published by OHCHR in 2011 (endorsed by the Human Rights Council in resolution 17/4 of 16 June 2011),<sup>81</sup> obliges States to have regulatory mechanisms to control human rights abuses by the third parties like business enterprises. Even though States do not usually control the extra-territorial human rights violations of business enterprises, yet the human rights treaty bodies advise the States to take actions for such violations. Section II of the document focuses on 'The Corporate Responsibility to Respect Human Rights'. The Human Rights mentioned herein are those enumerated in the International Bill of Rights and the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work. The business enterprises in the Guiding Principles include all business enterprises irrespective of 'size, sector, operational context, ownership and structure'.<sup>82</sup> The guidelines suggest that business enterprises carry out human rights impact assessments so that they can 'prevent and mitigate adverse human rights impacts'.<sup>83</sup> In case the business enterprises have committed human rights violations, then they have to 'provide or cooperate in their remediation through legitimate processes'.<sup>84</sup>

The responsibility in the PSNR and other UNGA resolutions, focus on the duty of States to have control over the activities of transnational corporations. The States where the activities of TNCs are carried out shall have the right to control and penalise the abuses of TNCs. Hence, the responsibility of States overpowers the responsibilities of TNCs in these documents. In the Guiding Principles on Business and Human Rights, the obligations of States to control the business enterprises are elucidated. At the same time, the principles guide the business enterprises also to protect human rights. In this regard, the human rights violations committed abroad by the business enterprises registered within a State are also held to be accountable. Hence, the role of home State is emphasised here. Thus, it differs

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<sup>79</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003) E/CN.4/Sub.2/2003/12/Rev.2.

<sup>80</sup> Hannum (n 1) 429.

<sup>81</sup> UNHRC Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (21 Mar 2011) UN Doc A/HRC/17/31.

<sup>82</sup> Section II, Principle 14, UNHRC 'Guiding Principles on Business and Human Rights' (21 Mar 2011) Doc A/HRC/17/31.

<sup>83</sup> Principle 19.

<sup>84</sup> Principle 22.

from the previous UNGA resolutions which demanded control over the activities of TNCs within their territories. Nevertheless, the efforts of UN System in this regard is laudable.

It is obvious that the focus of international human rights law is shifting from legocentrism. The involvement of other actors in ensuring human rights is increasing day by day as a top to down approach cannot be applied throughout but a bottom-up approach is inevitable. Therefore, the efforts of other actors like the transnational corporations, civil society etc. are called for by the UN human rights bodies for guaranteeing human rights. In the case of economic rights, State is not the only economic actor. Due to globalisation, transnational corporations with linkages at local level have to play a major role for a leap towards ensuring human rights.

In this regard, there are three kinds of duties towards protecting human rights with respect to the TNCs viz. 'the duty to avoid depriving, the duty to protect from deprivation, and the duty to aid the deprived'.<sup>85</sup> The first duty is negative in nature and demands restraint. The other two are positive duties. The duty to avoid depriving demands that a TNC does not act in a manner so as to violate human rights. Economic rights are directly linked to the activities of TNCs. Their activities cause economic inequalities, rise in food prices so on and so forth. Since the corporations aim at profit, their indirect effect on economic rights is largely ignored. Direct effect is visible in the bad working conditions thereby violating the right to work in good conditions. The duty to protect from deprivation suggests that standards must be set so that human rights violations do not occur directly or through the partners in supply chain.<sup>86</sup> The activities of corporations are in public sphere. Since human rights are universal rights, they have the duty to speak against violation of human rights.<sup>87</sup> Hence, obligating TNCs is one of the most significant aspects to be imbued for a newer IEO.

## 7. Conclusion

Despite the untiring efforts of the United Nations, discussed in the present study, ensuring economic rights is a difficult task to achieve. There are many hindrances before the implementation of these rights. Some of the problems are widening inequalities due to the 'misdirected process of globalisation', increasing poverty due to lack of consideration for human rights in development projects, resource constraints of the State,<sup>88</sup> corruption in State institutions, Bretton Woods and WTO institutional challenges, lack of strong laws to control the transnational corporations etc. Nevertheless, the efforts of UN by emphasising economic rights leaps forward in creating a Newer IEO. The difference between NIEO proposed few decades back and the newer international economic order is that the former demanded

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<sup>85</sup> Florian Wettstein, *Multinational Corporations and Global Justice: Human Rights Obligations of a Quasi-Governmental Institution* (Stanford University Press 2009) 290.

<sup>86</sup> *ibid* 308.

<sup>87</sup> *ibid* 311.

<sup>88</sup> Eide (n 42) 203.

strengthening State power whereas the latter focus on the economic rights of the people throughout the world. It also focuses on the percolation of non-State actors throughout the world and demands them to be more duty oriented. Nevertheless, it does not derecognise the power of State but includes within the discourse the power of people as this is the age of human rights.

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