



**RESEARCH PAPER**

**Historical, Regional and International Law Perspective on the Right to Development: An Overview**

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**ABSTRACT**

This paper focuses on tracing legal framework on right to development (RTD) from historical, regional and international law perspective. The RTD is significant for consideration in modern world. After the World War-II, many international declarations and conventions were made to secure international Human rights following many treaties and covenants. The RTD, as a human right was part of these instruments as a lesser part that provides the marvellous opening to international community to study human rights trials in more inclusive and wider frameworks that attempts to fill the gap of the prevailing international human rights supervisory machinery to address wider and comprehensive challenges (Marks, 1998). In this context, this paper traces legal framework on RTD and analyses relevant key international documents. The methodology used in this paper is qualitative and an analytical method is followed. The paper concludes that, nevertheless, the RTD having its authenticity is well recognised in international instruments and Declarations and is available to all on the basis on humanity.

**KEYWORDS** Human Rights, International Law, Legal Framework, History on RTD, Right to Development

**Introduction**

Unlike other rights those have been a topic of International Human Rights address, RTD is relatively recent. This was considered by Senegalese jurist, KebaM'baye, the former president of the United Nations Commission on Human Rights, in an introductory lecture at International Institute of Human Rights in Strasbourg in 1972. This followed in the shape of the enforcement of United Nations Declaration on Right to Development 1986 recognizing RTD as fundamental principle of Human Rights (Nanda et. Al., 1993).

Though the RTD was accepted and enforced in 1986 but its legal foundation can be traced back in other international treaties and declarations like UDHR and ICCPR and ICESCR. It can be said that RTD as a composite right was incorporated in International Bill of Human Rights. The legal foundation of RTD can be traced back in following legal instruments:

## Literature Review

### The United Nations (UN) Charter

The United Nations Charter 1945 is a treaty that is the foundation of the UN. This charter is deemed as constituent treaty and all members of the United Nations are legally bound by it. Most of the countries have ratified this charter. It states, "that Obligations to the United Nations prevails over all other treaty obligations. This charter was signed at San Francisco War Memorial and Performing Arts Centre in San Francisco, United States, on 26<sup>th</sup> of June 1945. On 24<sup>th</sup> of October 1945, this charter came into force. Relevant Articles are Chapter IX of UN Charter deals with the international economic and social cooperation.

By including "all without distinction" Article 55 gives internationally recognized right to all people of universe as being a human being not as being the citizens of state. The Charter negates any concept of discrimination on any base. It states that:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 requires the cooperation of all member states to achieve the purposes set forth in Article 55. It states that: All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55. Further, Chapter XI of the UN deals with the territories those are not self-governing. Article 73 states that: Members of the United Nations which have assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accepted as a sacred trust, the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories.

Moreover, this article requires from the administrating states to ensure economic interest. It states that: to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses. The article requires from the administering state to assist people in progressive development, it requires to, develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the circumstances of each territory and its peoples and their varying stages of advancement.

Further, it requires the international community to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to

the practical achievement of the social, economic, and scientific purposes. Same article also requires from the administering state to, transmit regularly to the Secretary-General, for informational purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible. The Charter further put burden on the shoulders of the administering states the application of general principle of good neighbourliness by incorporating the willingness of the member states. It provides that: Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good- neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

### **International Bill of Human Rights**

The term International Bill of Human Rights consist of the UDHR 1948, ICCPR 1966, ICESCR 1966 along with its two additional protocols. This name was given to these three important documents by the UN and were enforced in 1976 after the ratification of required number of member states. The International Bill of Human Rights consist of the elements of RTD in its contents. An analysis of these instruments is significant for consideration.

### **Universal Declaration on Human Rights (UDHR), 1948**

The fore most important instrument that governs and rule international law is the UDHR, 1948. UDHR was adopted by United Nations General Assembly on 10 December 1948 at Palais de Chaillot in Paris, France. By incorporating economical rights this Declaration laid down the foundation of RTD. The preamble of this Declaration imposes the obligations on member states to promote universal respect for and observance of human rights and fundamental freedoms.

This declaration aims to achieve international social order to ensure realization of all rights enshrined in the UDHR, 1948. This Declaration included economic, social and cultural rights in one single Document. According to this Declaration, Economic, Social and Cultural Rights are indispensable for one's dignity and free development of one's personality (UDHR, 1948). This inclusion of Economic, Social and cultural rights serves a dual function of freedom and equality to which RTD tends to achieve (Marks et. Al, 2006).

This Declaration consists of thirty articles. Though this Declaration is not deemed binding in general, yet its articles have been subsequently added in many other international instruments those are deemed binding. Hence it is presumed that this Article is binding in terms of its articles as part of customary international law (Hannum, 1998). Regarding the equality of human beings this article states that, all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. The rights of individual are secured by stating that, everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

### **International Covenant on Civil and Political Rights, 1966**

The economic, social and cultural development was protected in the first article that states that: All peoples have the right of self-determination, by virtue of that they

freely determine their political status and freely pursue their economic, social and cultural development. This convention requires from states to take necessary steps and legislation for the achievement of goal. The article further states that: Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant (ICCPR, 1966).

### **International Covenant on Economic, Social and Cultural Rights, 1966**

Like ICCPR, the ICESCR also require from the states to take steps for the achievement of economic goals. It states in article 2(1) that: Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. The right of self-determination is also guaranteed in article 1 that states that: All peoples have the right of self-determination, by that they freely determine their political status and freely pursue their economic, social and cultural development.

### **Resecrh Methodology**

This research follows an analytical method. Primary sources include Books, Scholarly articles, case laws, International instruments and technological sources.

### **Results and Discussion**

#### **An Assessment of RTD in International legal Instruments**

The RTD is guaranteed in some other important international documents as well. These are as follow.

#### **Declaration of Philadelphia, 1944**

This Declaration was signed on May 10, 1944 in 26<sup>th</sup> Conference of International Labour organisation (ILO) at Philadelphia, United States. It aims to restate the traditional objectives of the ILO. This declaration states that: All human beings, irrespective of race, cast, creed or sex, have right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

#### **Tehran International Conference on Human Rights, 1968**

The widening gap between the economically developed and developing countries impedes the realization of human rights in the international community. The failure of the development Decade' to reach its modest objectives makes it all the more imperative for every nation, according to its capacities, to make the maximum possible effort to close this gap. In Para 13, it is stated that: Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.

### **Rio Conference on Environment and Development, 1992**

This Declaration provides that: The right to development must be fulfilled to ably meet development and environmental needs of present and future generations.

### **Vienna World Conference on Human Rights, 1993**

This Declaration was a turning point for RTD. This Declaration states that: "All human rights i.e civil and political rights as well as social, economic and cultural rights are universal, indivisible, interdependent and interrelated. Further it provides that: The world conference on human rights reaffirms the Right to Development, as established in Declaration on Right to Development, as a Universal and Inalienable right and an integral part of fundamental human rights. This declaration declares the Human person as the central subject of Right to Development.

While development enables the facilities of life, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of RTD and the elimination of obstacles to development. Lasting progress towards the implementation of Right to Development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

### **Right to Development at Regional Level**

Like the United Nations, RTD was introduced in regional level in different regional organizations. These are as follows:

#### **African Charter on Human and People's Rights, 1981**

This is the only human rights instrument recognizing the RTD as legally binding and enforceable. This Charter has more importance as being the enforced much before the adoption of UNDRD in 1986. The preamble states that: it is essential to pay particular attention to Right to Development and both civil and political rights as well as social, economic and cultural rights cannot be dissociated from each other. It further states that:

All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

In *Ogoni Land Case*, the commission stated that: the State of Nigeria by failing to protect the people of Ogoni has violated their right to development (ACHPR, 2001). Each state party has to show efforts it has taken to ensure each of rights incorporated under the Charter. The consequences of this Charter come with the result that "some state parties include the concept of RTD in their constitution making it legally binding on state for example Federal Democratic of Ethiopia. The African Charter can be said as a first step to towards hope that the RTD can be made legally binding by incorporating it in the Constitution of member states to make it more efficient and binding.

#### **League of Arab States**

The right to development was professed in Arab Charter on Human Rights in 2004. This charter declares the right to Development as fundamental human rights and requires all states to establish the development policies and to take necessary measures to protect and guarantee the rights and states have duty to give effect to the values of solidarity and cooperation among them and at international level, also states have primary responsibility to strive for the eradication of poverty and achieving the economic, social, cultural and political development giving every citizen right to participate in realization of development and to enjoy the benefit and fruit thereof.

### **Association of South East Asian Nations (ASEAN)**

ASEAN Human Rights Declaration (2012) put emphasis on RTD. The member recognizes that the implementation of Right to Development requires effective development policies at domestic and international level and the member states are devoted to mainstream aspects of Right to Development into ASEAN community and a cooperation with international community to promote the Development.

### **Organization of American States, 1948**

The duty of States to protect the RTD was emphasized in Organization of American State. The charter of organization states that: the purpose of the organization should be the establishment of more just economic and social order that will make possible and contribute to the fulfilment of the individual, the duty for the integral development in the common and joint responsibility of member States, rather by joint organizations. Cooperation among states should include the economic, social, educational, cultural, scientific and technological fields, support the achievements of national objectives of the Members States, and respect the priorities established by each country in its development plans, without political ties or conditions. Further, the relevant Para provides that: Equity at all levels is indispensable for the pursuit of long-term prosperity and the realization of all the internationally recognized human rights, including the right to development by all.

### **The United Nations at Right to Development**

United Nations passed many resolutions to protect, promote and extend the right to development. These are as follow:

#### **General Assembly Resolution, 1161**

This resolution states that: a balance and integrated economic and social development would contribute towards the promotion and maintenance of peace and security, social progress and better standings of living, and the observance of and respect for human rights and fundamental freedoms (UNGA Resolution 1161).

#### **General Assembly Resolution on Permanent Sovereignty over Natural Resources, 1962**

The preamble of this resolution states that: Considering that it is desirable to promote international co-operation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination, attaching particular importance to the question of promoting the economic development of developing countries and securing their economic independence, desiring that there should be further consideration by the

United Nations of the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries.

Further this resolution states that: the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned. It protects the right of states to govern the growth of their natural resources (notwithstanding promised commitments to foreign companies), this principle is accepted as part of customary international law.

#### **First UN Conference on Trade and Development, 1964**

The conference provides that: The States participating in the Conference are determined to achieve the high purpose embodied in the United Nations Charter, to promote social progress and better standards of life in larger freedom; to seek a better and more effective system of international economic-operation, whereby the division of the world into areas of poverty and plenty may be banished and prosperity achieved by all; and to find ways by which the human and material resources of the world may be harnessed for the abolition of poverty everywhere. Further it states that: The international community must combine its efforts to ensure that all countries-regardless of size, of wealth, of economic and social system- enjoy the benefits of international trade for their economic development and social progress.

#### **Declaration of Social Progress and Development, 1969**

This declaration describes the primary conditions for social progress and development as the rights and responsibility of each State and as far as they are concerned, each nation and people to determine freely its own objectives of social development, to set its own priorities and to decide in conformity in principles of Charter of the United Nations the means and methods of their achievement without any external interference. Further, it provides that: Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and compliance with human rights and fundamental freedoms.

#### **Charter of Economic Rights and Duties of States, 1974**

This charter is first step towards the establishment of a New International Economic Order (NIEO) stressing the rights of smaller developed states to applicable equality in international economic relation. The preamble of this Charter describes the purpose of this Charter as the the promotion by the entire international community of the economic and social progress of all countries, especially developing countries, the overcoming of main obstacles in the way of economic development of the developing countries, and the acceleration of the economic growth of developing countries with a view to bridging the economic gap between developing and developed countries.

Strengthening to encourage shared economic security for development, particularly in relation of the developing countries, while focusing on the respect of sovereign equality of every State and through the collaboration of the whole international community, it further states that: Every State has the right to engage in international trade and other forms of economic co-operation irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences. In the pursuit of international trade and other

forms of economic co-operation, every State is free to choose the forms of organization of its foreign economic relations and to enter into bilateral and multilateral arrangements consistent with its international obligations and with the needs of international economic co-operation.

Regarding the promotion of economic, social and cultural development of people, this Charter provides that: Every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and the responsibility to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development. All States have the duty, individually and collectively, to co-operate in eliminating obstacles that hinder such mobilization and use.

Regarding further regarding the responsibility of states charter further elaborates that: All States have the responsibility to co-operate in the economic, social, cultural, scientific and technological fields for the promotion of economic and social progress throughout the world, especially that of the developing countries. Regarding the elimination of foreign occupied states and the rights of people of occupied states, the charter provides that: It is the right and duty of all States, individually and collectively, to eliminate colonialism, apartheid, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a prerequisite for development. States which practise such coercive policies are economically responsible to the countries, territories and peoples affected for the restitution and full compensation for the exploitation and depletion of, and damages to, the natural and all other resources of those countries, territories and peoples. It is the duty of all States to extend assistance to them. Same article further elaborates that: No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force. This charter is a comprehensive document that reforms all ting practices and makes it sure the full participation of the people of occupied territories in the journey of development. Further this Charter puts a duty on all states, individually and collectively, to co-operate in elimination of obstacles in way of development.

#### **Commission on Human Rights resolution 4, (xxxiii) 1977**

This resolution contains the initial clear reference of the RTD in UN resolution, and identifies the RTD as a human right and calls the Secretary General of the UN “to take a study on the international dimensions of the RTD as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the NIEO and the fundamental human needs.

#### **Working Groups on RTD**

The United Nations has played a dynamic and important part during the development of RTD earlier and later of the Declaration of RTD 1986. A series of expert mechanism has been supported by it on RTD.

#### **First Working Group on RTD of governmental experts**

The Working Group of Governmental Expert on the Right to Development (1981-1989), to study scope and content of RTD and the most operative resources to guarantee the recognition of economic, social and cultural rights. In its early nine sessions, the



working group performed a dynamic part in drafting the appropriate text for Declaration.

### **Second Working Group, 1993-1995**

The Open-Ended Working Group of Governmental Experts on the Right to Development (1993-1995), to find hindrances to the application and recognition of the Declaration and to endorse methods for all states to understand RTD.

### **Intergovernmental Working Group of Experts, 1996-97**

The intergovernmental Group of Experts on right to development (1996-1997). This expert's group was formulated to make a plan for the application and advancement of the right to development and to find material and applied actions to implement and encourage it.

### **Present Open- Ended Working Group of Experts, 1998**

The independent expert on right to development (1998-2003). This expert group was trailed by the 'high-level task force' on the application of RTD (2004-2010), with a dictate to provide proficient intelligence, and input to the diplomatic open-ended Working Group on Right to Development.

### **UNESCO Declaration on Race and Racial Prejudice, 1978**

Regarding the people of world, there equal right of economic development, this Declaration states that: All peoples of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development.

### **Right to Development in Present Century**

The Right to Development develops as one of the most rising third generation right in previous century. In current century, international community focused on the notion of Right to Development as a Human Right. Many declarations and conventions were adopted in order to meet the encounters and goals. Some of most significant are as follows:

### **Millennium Summit and Declaration, 2000**

Regarding Development and poverty eradication, the summit declares that: We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected and are committed to making the right to development a reality for everyone and to freeing the entire human race from want. Further it states that: We resolve therefore to create an environment - at the national and global levels alike - which is conducive to development and to the elimination of poverty.

Regarding the financial assistance, the summit declares that: We are concerned about the obstacles developing countries face in mobilizing the resources needed to finance their sustained development. We will therefore make every effort to ensure the success of the High-level International and Intergovernmental Event on Financing for Development, to be held in 2001. The Summit focus on the requirements of the least developed countries. The summit aims to undertake to address the special needs of the

least developed countries. In this context, we welcome the Third United Nations Conference on the Least Developed Countries to be held in May 2001 and will endeavour to ensure its success. Summit call on the industrialized countries to adopt, preferably by the time of that Conference, a policy of duty- and quota-free access for essentially all exports from the least developed countries to implement the enhanced programme of debt relief for the heavily indebted poor countries without further delay and to agree to cancel all official bilateral debts of those countries in return for their making demonstrable commitments to poverty reduction; and to grant more generous development assistance, especially to countries that are genuinely making an effort to apply their resources to poverty reduction.

To assist the countries facing heavy indebted countries, the summit aims to deal comprehensively and effectively with the debt problems of low- and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term.

To improve the transit transport system, the summit forces on donors to recognize the special needs and problems of the landlocked developing countries and urge both bilateral and multilateral donors to increase financial and technical assistance to this group of countries to meet their special development needs and to help them overcome the impediments of geography by improving their transit transport systems.

### **G7 Havana South Summit and Program of Action, 2000**

This Summit includes the clear language regarding the RTD and states that: We stress that democracy, respect for internationally recognized human rights fundamental freedoms, including the Right to development (...) are an essential part of necessary foundations for the realization of people-centred sustainable development.

### **Conclusions**

The RTD has a rich history in international legal framework. This concept evolved from the Declaration of Philadelphia 1944 and reached to the final proclamation of Declaration on RTD 1986. The relevant provisions on RTD are added in the United Nations Charter 1945 and International Bill of Human Rights. Although the Declaration on RTD is not a binding document but its contents have the binding nature as being the part of other binding instruments. Hence this Declaration is not something to be ignored. This Declaration demands from the states to undertake necessary steps for the realization of RTD. However, it is the duty of states to take necessary steps for the realization of Right to Development. An international community through various enactments, not only undertakes the responsibility to provide this right to the less developed countries but also puts such burden on shoulders of such countries. Also, international community puts the obligation on international financial institutions (IFIs) to support the least developed countries. Like other Sovereign states, for instance, Pakistan, as being the administrating authority have taken important steps to promote the RTD in Azad Jammu and Kashmir. Some important features have also been incorporated in constitution of Azad Jammu and Kashmir to protect the RTD of her inhabitants.

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