

POVERTY ERADICATION AND HUMAN RIGHTS¹

Arjun Sengupta

1. Introduction

In this paper, I examine the proposition that “poverty is a violation of human rights.” It has been put forward by UNESCO and several human rights activists and organizations to mobilize international public opinion in the fight against poverty. It is hoped that the proposition will lead to the adoption of an international strategy towards the abolition of poverty, in the same way as describing slavery as a gross violation of human rights had led to the abolition of slavery.²

Whether this proposition can effectively galvanize people and policy-makers would depend on the interplay of political institutions and interest groups and the state of economic development in different countries. There is a view that slavery could be abolished only when the economics of slavery lost out to the economics of wage labor in terms of productivity and cost, and the support for the call for abolishing slavery gathered momentum without much effective opposition from the vested interests. In a similar vein, it can be argued that the world economy today has developed sufficiently so that it is not only possible to abolish poverty everywhere, but also to benefit everyone through such abolition by expanding markets and improving the quality of human capital. It may therefore be the opportune time to mobilize international public opinion, with appropriate moral appeal, to work out acceptable strategies to abolish poverty.

These are interesting issues of political economy worth thinking and writing about. But I do not propose to deal with them in this paper, which is confined to the logical implications of the proposition that poverty is a violation of human rights and discusses whether there is an acceptable and plausible interpretation of the proposition, in a human rights framework, that improves the chance of implementing

The author was, a Professor of International Institution at the School of International Studies, Jawaharlal Nehru University, New Delhi, and formerly an Executive Director of the International Monetary Fund and Member-Secretary of the Indian Planning Commission. He is currently, an Adjunct-Professor of Development and Human Rights in the Faculty of Public Health at Harvard University and an Independent Expert for the UN Commission on Human Rights, Geneva.

¹ This paper has been produced for a philosophy seminar that took place in September 2003 in New Delhi (India), in the context of a UNESCO project entitled "Ethical and human rights dimensions of poverty: towards a new paradigm in the fight against poverty." It will appear as a chapter in a forthcoming UNESCO volume, edited by Thomas Pogge, on Severe Poverty as a Human Rights Violation.

The author is grateful for many valuable comments on the issues raised in this paper to Thomas Pogge, Stephen Marks, Amartya Sen, Asbjorn Eide, Polly Vizard, Manimoy Sengupta, Moushumi Basu, and Margot Salomon.

² UNESCO: “Abolishing poverty through the international human rights framework: An integrated strategy” (Working paper, 2003).

a strategy for the abolition or eradication of poverty.³ An affirmative answer to this would be the first step towards calling for a human rights approach to the eradication of poverty. The paper will not get into the details of strategies of poverty eradication. It will be presumed that such strategies exist, and that at least some of them are amenable to a human rights treatment; that is, they can be designed and implemented in a manner consistent with human rights standards to eradicate or alleviate poverty as a human rights objective.⁴ The economics, and possibly politics, of poverty eradication can be separate subjects of research. Here they will be touched upon only to illustrate some points. Instead the paper will focus on how poverty can be viewed as a human rights violation, precisely in terms of the definition and content of those human rights and what would be the added value of pursuing a human rights-based strategy for eradicating poverty.

In the next section, I shall discuss the concept of human rights as related to poverty and the corresponding obligations. In Section 3, I try to identify the nature of the right whose violation can be regarded as poverty and also identify the right-holders. In Section 4, I discuss the obligations of the duty-bearers, so that the right can be effectively realized.

Section 2: Human Rights and Poverty

Poverty has always been considered as degradation of human dignity, and extreme poverty as a form of extreme degradation: Poor people cannot lead a life commensurate with the standards of civilized existence. They are afflicted with hunger, malnutrition, ill-health, unsanitary housing and living conditions, and often without much education. They do not have the resources to overcome these afflictions. Nor does the society provide the means for them to overcome these afflictions. They lose their self-respect and ability to participate in any kind of fulfilling social life. In short, poor people lack the freedom to lead a life with dignity.

Poverty in this sense has existed throughout human history, and removing or alleviating poverty—helping the poor and raising their living condition—has been recognized as a universal moral value in practically all societies. Most religions and civilizations inculcate a sense of guilt in people toward the less fortunate who suffer the indignity of poverty. So gods and saints were supposed to look after the poor, good kings were expected to protect the poor, and all virtuous people were enjoined to

³ Much of this paper builds on, extends, or disagrees with the arguments of the excellent study by Thomas Pogge on this subject ("Severe poverty as a human rights violation," in this volume).

⁴ It may be noted that a human rights activity is concerned not only with the outcome or the consequences of the activity, but also with the way the activity is carried out. For example, if hunger is considered a violation of human right, it cannot be eradicated, say, by throwing food at the hungry, but only by ensuring availability of food with dignity and sustainability, through employment, income, or commodity-support programs. I have discussed the related issues in my reports to the Human Rights Commission at Geneva, as the Independent Expert on the Right to Development (1999 to 2002). [First Report Ref. No. E/CN.4/1999/WG.18/2, 27 July 1999; Second Report Ref. No. A/55/306, 17 August 2000; Third Report Ref. No. E/CN.4/2001/WG.18/2, 2 January 2001; Fourth Report Ref. No. E/CN.4/2002/WG.18/2, 20 December 2001].

help the poor. In spite of all that, poverty persists and moral values alone are not sufficient to motivate a society to take the required steps to remove poverty. The contradiction between such professed values and the actual performance of a society on the removal of poverty has become more and more glaring with the growth of prosperity in many countries and in the world economy as a whole. Poverty persists, although not because there is not enough means to remove it. The average opulence in most societies, and definitely so in the international community, is more than sufficient to eradicate poverty from the face of the Earth. If there was a political will to translate the moral values into practical social arrangements, at least in the last few decades of the twentieth century, there would be very little poverty today.⁵

It is against this background that one can fully appreciate the appeal of the concept of poverty as a violation of human rights and the removal of poverty as a method of fulfilling human rights. If that claim was accepted, it would raise the cause of poverty eradication to a status equivalent to protecting the foundational norms of a society, which the human rights are recognized to provide. Human rights have emerged from a long history of people's actions, from the days of the Magna Carta, the American War of Independence, and the French Revolution, until recently, to convert the moral values into claims as rights on those in authority and power in a society. Human rights are claims that set the standards of achievement of a society, on the basis of which societies are formed. Meeting these claims lends legitimacy to the authorities governing the society. If human rights are violated people could legitimately demand a change in the government or a repeal of the constitution.⁶ As early as 1776, the American Declaration of Independence declared that the governments were instituted to secure certain inalienable rights, and "whenever any form of government becomes destructive of these ends, it is the Right of the People to alter or to abolish it."

After the Second World War, human rights came to be incorporated in intergovernmental instruments, such as the UN Charter and the Universal Declaration of Human Rights, which formed the basis of the new international order. These instruments, together with the two UN Covenants of Economic, Social and Cultural Rights, and Civil and Political Rights (adopted in 1966, entered into force in 1976), recognized the human rights in international law. They reflected "the spreading conviction that how human beings are treated anywhere concerns every one, every where."⁷ All individuals in the world were recognized to have some indispensable human rights and fundamental freedoms, the protection and promotion of which was the purpose and concern of all states and institutions in the international society of

⁵ Thomas Pogge, in a thorough recent study, has estimated that an income transfer of \$300 bn a year, in 2001, would eradicate poverty of all the 2800 million people in the world living below \$2 per day, which is a higher poverty-line than \$1 a day that is more generally used for such calculations. This amount is less than one percent of the world income and is much less than some comparable figures, such as the US defense budget (\$400 bn) or the estimated annual "peace dividend" resulting from the end of the Cold War (\$477 bn). See Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, Cambridge Polity Press, 2002, Chapter 8.

⁶ An overview of the history of the evolution of the concept of human rights was presented in my paper on "Realizing the Right to Development" in *Development and Change*, Netherlands, Volume 31, Number 3, June 2000.

⁷ Louis Henkin, "International Human Rights as 'Rights'," in Morton E. Winston (ed.) *The Philosophy of Human Rights*, Wadworth, California, 1989, p. 129.

nations. Fulfilling human rights became the obligation not only of the nation-states, but also of the international community. A violation of the rights would attract international reprimand and call for appropriate remedial action, in accordance with international law. So if poverty can be shown as a violation of human rights, the removal of that poverty will become an obligation of all states who consider themselves members of the international society bound by international law and by the obligation to provide assistance and cooperation, as recognized by the UN Charter itself.

All of these go to show the attractiveness of approaching the problems of poverty from a human rights perspective, whereby the eradication of poverty can be equated with the prevention of a violation of human rights. But they still do not establish how this can be done; whether such an equation is meaningful; whether certain rights can be specified, whose denials can be described as poverty; whether those rights can be regarded as human rights, entailing obligations that are binding on identified duty-bearers; and whether their duties are plausible, in an appropriate sense of the term. All these issues are problematic, and if these cannot be resolved both in theory and practice, the notion of poverty as a violation of human rights cannot be taken as more than an empty and ineffective slogan.

To begin with, let us assume that poverty can be identified with the absence, denial, or violation of some human rights. What would that imply for the set of actions or social arrangements for fulfilling those rights and removing poverty? This would depend very much upon what is meant by “human rights,” and how the recognition of a claim or an object of value as a human right would bind the different agents in the society to specified obligations of duty. Who would those agents be and what specific obligations would they have with respect to that right?

All rights entail obligations—that is, how rights are defined as distinct from any other claim or object of desire. If there is a right “R” which can be claimed by an agent “A,” then there is some obligation “O” of at least another agent “B” (and possibly other agents, “C, D, E . . .”) to enable the realization of the right, when the agents are members of the society that recognizes the right.⁸

The binary relationship between rights and obligations cannot be appreciated without relating them to the binary relationship between right-holders and duty-

⁸ This is an extension of the definition of rights as claims provided by Feinberg and Raz, building on Hohfeld, when someone having a right is to have a claim “to” something (some objects of value or interest) and “against” someone who is under an obligation to act in such a way as would enable its fulfillment. (Joseph Raz, “On the nature of rights,” *Mind* 93, 1984; Joel Feinberg, *Social Philosophy*, Englewood Cliffs, NJ, 1973, Chapter 4; W. Hohfeld, *Foundational Legal Conceptions*, New Haven CT, 1964).

It may be noted that in terms of this definition, while for every right there is a corresponding duty or obligation, there need not be for every duty a corresponding right. A duty may be called for or performed, for many reasons, and not necessarily because an agent has a right to call for it. But a right on the other hand cannot be a valid claim, if it is not matched by a corresponding duty. Accordingly a “valid right” can be defined as a valid claim both “to” an object and “against” another subject. A valid claim “to” an object has to be justified and procedurally legitimate. A valid claim “against” a subject has to be “plausibly” assignable to some duty-bearer whose actions could satisfy the right.

bearers. The same right when claimed by different right-holders may entail different kinds of obligations depending upon who bears the obligation.⁹ For example, the right to food claimed by someone who is extremely poor would call for actions different from what would be required for someone with middle-income. The actions to be taken would also be different for different duty-bearers, the state, the international institutions, or other agents. Recognizing a right would therefore imply recognizing a “right-holder,” who is in a position to claim the right. It would also imply specifying some actions or policies that enable the fulfillment of the right to be carried out as “obligation” or “duty” by one or more identified duty-bearers.¹⁰

When a right is created by a law or a contract, the right-holder, the agent “A,” can be an individual, a group of individuals, or a legal person, and the claim of the right is justified by the legal system. When it is recognized as a human right, it is based on values deemed fundamental by the society and accepted as “the norms of behavior” or “the standards of achievement” of all social agents. They are usually incorporated into that society’s legal system and institutional arrangements, but the justification of the claims does not depend on such incorporation. It depends—according to some accepted moral standard—on their relation to human dignity, liberty, happiness, and well-being, which societies are supposed to ensure. Therefore, the right-holder must be an agent whose improved realization of the right would improve the overall social values or aggregate happiness and well-being. That is why the agent “A” claiming a human right has to be an individual, or a collective that behaves like an individual, because only an individual can have a sense of dignity or happiness. Only then it is possible to order different states of social arrangement in terms of overall improvement in welfare.¹¹

⁹ It is usual in human rights literature to treat the terms “obligation” and “duty” interchangeably, although philosophers following Rawls often distinguish between general duties (e.g., to keep one’s promises) and specific obligations (e.g., to keep some specific promise one has made). However, human rights, recognized as law, would call for specified obligation, which would be binding and therefore would have very little scope for any general duty until it is related to specific duties. That is why usually no distinction is made between these terms, and I follow the same practice in this paper. (I am grateful to Thomas Pogge for drawing my attention to this point).

¹⁰ Thomas Pogge aptly describes rights as “addressed to agents and, in the final analyses, are rights to particular conduct (actions and/or omission)”. The agent “B” who has the obligation of satisfying the right, cannot just gift it to the right-holder, but has to take some actions or adopt some policies (“P”)—perform a “conduct”—to enable the right to be enjoyed. As I shall argue later, all policies involve incurring costs, in terms of alternative opportunities foregone, which must be taken into account in fixing obligations.

¹¹ Only an individual can be described as happier in one state of affairs than another, unless specific rules are laid down for such assessment of the improvement of welfare of a collective, in which case it functions like an individual. That is why the notion of a “people’s” right in human rights instruments would imply either that it is enjoyed individually, but exercised collectively, or that it refers to a notion of well-being of a collective which cannot be desegregated into individual well-beings but has accepted procedures for indicating its improvement. In the first case, policies to fulfill the right would apply to the collective of all individuals who are in a position to claim the right. That is the case with most rights, such as to food, health, education, or to culture, religion, freedom of expression or information. There must be a mechanism to ensure that the benefits of the right can be enjoyed individually. In the second case, which is more of an exception than a rule, such as the right of self-determination or the cultural identity of indigenous people, the right refers to the privilege or advantage of a whole group, treated as a unit in itself. A people’s right is sometimes erroneously described as a State’s right. Unless the State fully represents all the people within its jurisdiction, and transfers automatically the benefits of the right to the people concerned—or the State is fully identified with the people—it cannot be considered as having any human right. For all of this, see Arjun Sengupta, “The Theory and

Besides specifying the right-holder “A,” it will also be necessary to establish an indicator of the right “R.” An improvement in the value of “R” can be taken as an improvement in the enjoyment of the right. Such an indicator must be “objective”—that is, independent of the subjective preferences of the right-holder and expressed as a function of some determinate objects, which combine to yield that right. In that sense, the rights can be described as determined by the access to and availability of goods and services, of technology and institutions, of time and scarce resources. An indicator of a right can be built on the measures and values of these determinants. The indicator of the right to food, for example, has to be constructed out of the indicators of the access to and the availability of food, and the right to food of the poor can reflect quite distinctive characteristics of the problems of access and availability, very unlike the problems that concern the not-so-poor or the relatively rich in a particular country.

The identification of the right, whose violation can be regarded as poverty, besides being described as a function of the access and availability of corresponding goods and services, would involve establishing a procedure, that if steps are taken to improve the right or remove its violation, the benefits would be enjoyed by all individual members of the group identified as “poor.” For instance, if the right to food is regarded as an essential element of the right whose violation can be described as poverty in a country, the international community sending food-aid to that country would not remove that violation, unless a mechanism is set up in that country to make that food accessible to all the poor people in a non-discriminatory manner consistent with human rights standards. Further, it will also be necessary to identify the members of the group of the “poor” who could use that mechanism if they wished to claim the right.¹²

The “obligations” corresponding to human rights are usually addressed to the State or the sovereign-authority of a country, in whose jurisdiction the right-holders reside. That is how human rights have evolved in history, out of movements and struggles of peoples asserting their rights against authorities. But logically, human rights that are foundational norms of a society entail obligations for all agents or members of the society, whose actions can have an impact on the fulfillment of the rights. In the human rights instruments of the United Nations, the State has been described as the “primary duty-bearer,” recognizing the paramount importance of the action of the State either directly impacting on the rights, or indirectly by influencing other agents’ behavior and coordinating their actions. The State has the authority to enact legislation to frame rules and regulations and to administer them with penal powers over all the agents functioning within its jurisdiction. It is also the agency to intermediate with international institutions and other States, whose cooperation may be essential for the State to succeed in delivering the rights. Such coordinating and

Practice of the Right to Development,” *The Human Rights Quarterly*, October 2002. On the significance of group rights, and on the subject of States asserting the human right to development, see also Margot E. Salomon and Arjun Sengupta, *The Right to Development: Obligations of States and the Rights of Minorities and Indigenous Peoples* (Minority Rights Group International, 2003).

¹² If a class of people whose per capita income or expenditure is less than a specified amount, say \$1 in PPP (purchasing-power parity) terms is defined as “poor,” the statistical size of that class can be quite determinate. But it still may be extremely difficult to identify each individual member of that class who can be given a coupon or ration-card to claim the benefits of the poverty-alleviation mechanism.

mediatory functions of the State must build on the obligation of all these agents of the international community to do what they can to enable the fulfillment of the right. As members of the international society that recognize the human rights and ratify the treaties and covenants, all such external States and institutions take on the obligation of ensuring these rights and cooperating with the States where the right-holders reside.

Just as there are several duty-bearers, there may be a number of different duties that each duty-bearer may perform, where duties refer to actions taken or specific measures adopted, to enable the enjoyment of the right. These duties may be categorized as “direct” duties, “indirect” duties, and “contingent” duties. Direct duties impact directly on the enjoyment of the right by the right-holder. Indirect duties impact through the duties or policies carried out by other duty-bearers. Contingent duties are to be adopted by a duty-bearer in response to actions taken by others or to unforeseen changes in the situation. For example, the right to food of the poor can be ensured directly by the State through public distribution of food or by enabling the poor to earn more, and indirectly by helping to increase production of food and by cheapening the price. Contingent duties of the State may consist of taking special measures if there is a drought, or protecting the poor employees if they lose their employment. International institutions may carry out their obligation by directly providing food aid to the destitute, indirectly through the local authorities for distribution or by supporting an international trading system that allows cheaper import of food or higher incomes of the poor through exports, and contingently by protecting the terms of trade of the primary products during a world recession. Similar duties can be specified for corporate sectors and other individuals to help the poor earn more income by expanding production and employment, or by paying more taxes to enable their government to expand their aid, or income transfer to the poor.

It is important to identify all the different duty-bearers and specify their duties to ensure the fulfillment of any particular human right. Even if the State is the primary duty-bearer, it cannot deliver the right on its own, without taking into account the actions of all concerned social agents. A society consists of a large number of interacting agents, with actions of each of them having an impact on the actions of others. Economists like to talk about a general equilibrium system of production, but the logic is equally applicable to any complex social order. The result of the action of any single agent depends on the action of others, taken autonomously or in response to others’ behaviors or some specific contingencies. The extent of the impact of any agent’s action—or the marginal product in terms of the final result—would vary for different activities and for different agents. But an assessment has to be made of this interactive process before judging whether a right can be fulfilled and what steps should be taken to fulfill it and by whom.

The identification of the obligations of the different agents and their specific duties is an essential condition for determining the feasibility of a right so that the right can be realized. Passing the test of feasibility, or as Maurice Cranston would put it, “the test of practicability,”¹³ is in turn an essential condition for the admissibility of the right. If a right is not feasible, no duty of any agent can realize the right. But even when one can identify a set of action or policies that enable the realization of the

¹³ Maurice Cranston, *What are human rights*, Bodley Head, 1973, pp. 65-71.

right, assigning those actions or policies as duties to different agents in the society may not be straightforward. It will be necessary to assign these duties in a human rights framework, so that if they were carried out consistently with human rights standards, the right will be, with a high probability, actually realized. It is in that sense that specifying the duties and obligations is a condition of the feasibility of the right.¹⁴

If it is accepted that a human right should be a “feasible” right—to go beyond the status of a “manifesto” right and become a “full-fledged right”—and if poverty eradication is to be identified with the fulfillment of a specific human right, it will be necessary to design a program to be implemented by the State and other agents to realize that right. But “feasibility” does not mean that the right would be actually realized immediately, under present circumstances, and for everyone, without limiting the rights to very few in number.¹⁵

First, the actions taken or the policies adopted by any duty-bearer, if they are appropriate, can at best be described as having a high probability of producing the outcome of realizing the right. There is seldom a one-to-one correspondence between a policy “P” and the outcome “R,” especially when one is talking about a social system with interacting agents. This is true of all rights, economic and social or civil and political, especially if they are human rights, applicable to all individuals, in all circumstances. So even if the policy “P” is adopted and the obligation is fully carried out by the States or any other duty-bearer, there will always be some probability that the right may remain unrealized because of unforeseen disturbances.

Secondly, very few rights can be realized immediately within the given circumstances. They need to be progressively realized over time, because policies take time to work themselves out with all agents adjusting to the changes. Even the freedom from torture cannot be secured immediately after legislation is adopted. It requires time not only to build up the institutions of enforcement mechanism, but also to let the legislation be absorbed in the social structure. It is even more true if all members of the society are to enjoy the freedom from torture, not just from the State but from all other social agents.

Thirdly, a human right is supposed to motivate social change, reform the institutions, amend the laws, and convert the in-principle feasibility to actual realization. To say that until it is actually realized, it cannot be regarded as a human right is to deny its essential character and its role in social transformation. The Universal Declaration of Human Rights proclaimed itself “a common standard of achievement for all peoples and all nations,” to which end, “every individual and every organ of society (. . .) shall strive by teaching and education to promote respect

¹⁴ In a similar vein, Feinberg has talked about a “full fledged” right, when a valid “claim-to” a right derived from some accepted norms is matched with a valid “claim-against” some agents, who have specific duties to make the right practicable. He calls a right “a manifesto right” when the valid claim-to the right has not yet become practicable on a scale to be matched with a valid claim-against [Joel Feinberg, “The nature and value of rights,” *Journal of Value Inquiry* (1970), Vol. 4, pp. 254-56].

¹⁵ This has been the argument used by many authors to challenge the validity of the economic and social rights by denying their “feasibility,” and if this argument is correct, poverty eradication can never be achieved as realizing any human right. The untenability of the argument has been clearly demonstrated by Amartya Sen in “Human Rights and development,” the paper presented at the Nobel Symposium on the Right to Development, Oslo, October 2003.

for the rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.” Human rights are both realizable standards of social behavior to be enshrined in a country’s legal system and social institutions, and also a guide to social change and public action, moving beyond “feasibility” to actual implementation of those standards.

There are two other aspects of the rights-obligation relationship that need to be clarified before linking poverty with a human right violation. The first is related to the question of whether a human right is a legal right or a moral right, also raised by Pogge, before he decided to treat the subject only as a moral right—“whether and under what condition severe poverty violates human right in the moral sense.”

Human rights, according to the human rights movement and international human rights laws, are legal rights, with binding obligations on the duty-bearers, who are primarily the States. They are supposed to be accountable for any failures to carry out their obligations and are expected to take remedial actions if their non-compliance with their duties is determined by an appropriate independent mechanism. It is this legality of the rights and the binding nature of their obligations that is the main attraction of claiming human rights. It improves unquestionably the likelihood of fulfilling the rights and also of monitoring, restraining, or promoting, as the case may be, the actions of all the parties that impact on the realization of the rights.

The crucial feature of legal rights is their binding obligation, and not necessarily that they are justiciable in a court of law. If appropriate legislative measures or laws can be adopted to incorporate those obligations into the legal system, then the courts may be able to settle the disputes according to law. But monitoring and arbitration, including enforcing remedial action, can be done by other mechanisms, such as administrative systems, treaty bodies, executive and legislative authorities, local government agencies, people’s committees, civil society organizations, village elders or bodies that uphold customs and conventions. Given the way the judicial systems function in most developing countries, there is no reason to believe that the courts of law would always be a better adjudicating mechanism than others. It is the acceptability of the binding obligations by the society and the social pressure on the duty-holders that ultimately determine the extent of compliance.¹⁶

Moral philosophers, on the other hand, would regard human rights essentially as moral rights, when some universal moral values derived from notions of human dignity are claimed as rights by human beings irrespective of their class, religion, language, or ethnicity. As rights, they will have corresponding obligations, but they will be moral obligations on duty-bearers who **should do** their duties, so that the corresponding rights **should** in practice be realized. Even if these may not be legally enforceable, these obligations are no less binding on moral agents influencing their behavior. If these rights can be institutionalized and made into binding legal rights, they probably will be more regularly realized. But even if they are not, and even if such rights are not always actually realized, the importance of moral rights claims would remain as grounds of public action to make people do what they should do

¹⁶ For a discussion on the nature of legal rights, see, Louis Henkin, *The Age of Rights*, Columbia University Press, NY, 1990.

according to their obligations. Those obligations may be legally non-binding, if they cannot be perfectly specified, but they are still grounds for carrying out their duties on ethical grounds.¹⁷

Moral rights, accordingly, have a very powerful appeal for establishing standards of behavior of social agents. The prospect for poverty eradication will improve if poverty is seen as a violation of specific moral rights. But this appeal will fall far short of the reach and the force of the human rights claimed as legal rights, especially against the authorities of the State to which the people claiming these rights belong and other States who recognize them as international law.

All human rights claimed as legal rights should qualify also as moral rights, justifiable in terms of acceptable norms of a universal moral order.¹⁸ That is necessary to establish the legitimacy of the rights, particularly when human rights elevate a right to the status of foundational norms of a society. But then they have to go beyond that and get converted into legal rights, creating binding obligations on agents who are in a position to enable the fulfillment of the right. In Sen's language, such rights must have identifiable correlated duties, which can be regarded as perfect obligations, with the specification of the duties, as well as the duty-bearers. These can be complemented by general duties of all members of the society, national or international, that recognize that human right.

In terms of our classification of duties, the "direct" duties are equivalent to "perfect obligations" of the different agents, especially of the State because the outcome of the right and performance of the duty are positively correlated, and if the duty is not performed, the outcome is negatively affected. Non-performance of the

¹⁷ Amartya Sen is one of the strong protagonists of this view. For this, he invoked the Kantian notion of "imperfect obligation," which relates to situations when the obligations related to a right cannot be perfectly specified, either in terms of the duties to be performed or the duty-bearers who are supposed to perform them. Without such specification, it may be difficult to make the rights legally binding. Still, these would remain "imperfect obligations" on agents or duty-bearers, who are in a position to help to realize the right and therefore should help under such obligation as a moral responsibility. If they can help to fulfill a right, they have a duty to help. Sen's views are clearly articulated in his paper, "Consequentiality Evaluation and Practical Reason," *Journal of Philosophy*, September 2000.

¹⁸ For a legal positivist, it is not necessary that a justification as a moral right must precede its recognition as a legal right. If a claim is recognized through an appropriate norm-creating procedure and accepted and ratified as a legal right, then it becomes a legal right irrespective of whether, or not, the moral arguments behind the legal right are recognized. There is no reason to believe that human beings are born with some inherent moral rights. It is good enough if these rights are bestowed on them by some legal order to have all the force and appeal of human rights. If there is no legal recognition, there may be social traditions or moral reasons to support some norms or advance some claims, but they cannot be regarded as rights with binding obligations.

For protagonists of moral right, this argument breaks down when one considers questions such as: What if governments are **not** bestowing such legal rights; what if, say, to take an extreme case, the Nazis had won the Second World War? Would, in that case, human rights not exist and the Nazi atrocities not have violated anyone's human rights? Moral rights precede legal rights with binding moral obligation, which would disallow such atrocities; when some of these rights are derived from some paramount, universal moral values, they can be raised to the status of human rights, not necessarily because they belong to human beings, but because they are justified morally and procedurally.

duty would be equivalent to “violation of the right.”¹⁹ The “indirect” duties and the “contingent” duties would be more akin to “imperfect obligations,” as the exact relationship between the duty and the outcome is uncertain and cannot be specified until other duties are specified and performed. But if the State or any other designated agency works out a program taking into account all these indirect and contingent duties, assigning them to specific duty-bearers to complement the direct duties performed by the State and other concerned “agents,” these “imperfect” obligations can be “converted” into perfect obligations which would be binding on those identified duty-bearers. In that case, any agent in a position to improve “R”—including foreign governments, wealthy individuals, or corporations—would be human rights violators for failing to raise “R,” if their obligations can be specified, and their initially imperfect obligations are changed into perfect obligations to make them binding.²⁰

This takes us to the other issue, referred to by Thomas Pogge, of the “plausibility” of duties.²¹ According to Pogge, if poverty is to be identified with the absence, denial, or violation of a human right, then that right is “plausible” if the correlative duties are plausible as well. But how does one judge that “plausibility”? Can one lay down some principles, which decide on that plausibility as a general rule, without changing them according to subjective judgments about the morality of the rights? I have discussed elsewhere that for an object of claim to qualify as a right, it must satisfy the tests of legitimacy and coherence, described as Sen’s test of

¹⁹ If “R” is the indicator of the right, “P” stands for performance of a direct duty, this relationship is expressed as $\frac{\delta R}{\delta P} > 0$, and P not equal to 0, implying that not taking any action is also a policy or

performance of a duty. A “non-performance” is negative performance (- P), which would reduce the value of R. Not allowing P to take a value “0” implies that for an agent like State, there is no such thing as “non-action,” because everything the State does, including not taking any action, is a decision which has a cost in terms of alternative values lost. For instance, consider the right not to be tortured. It is usually considered to be “cost-less” by writers who are bent on distinguishing between the so-called negative and positive rights—negative rights are supposed to be “cost-less” and positive rights “costly.” The State deciding “not to torture” can fulfill the right without spending any resources. But this argument is faulty because if the State practices “torture,” and if the State is not irrational or pathological, it must expect some “value” to result from the torture. It may get some information, or some special service, or fulfill some other objectives. If the State has to stop practicing “torture,” as that violates a human right, it has to adopt some other “positive” policies, such as incentives, bribes, or institutional changes, all of which cost resources. So not torturing would also involve spending resources for the State in terms of such opportunity costs. To this must be added costs of administering the policy and ensuring that others in the society, and not just the State, refrain from torturing under pain of imprisonment. All these would blur the conventional difference between “negative” and “positive” rights.

²⁰ Making the obligations binding does not mean making them “legal” in the narrow sense of being “justiciable.” Some of them may possibly be made a part of law, adjudicated by different institutions to which I have referred above. For my purpose it is sufficient if it can be demonstrated that the obligations are binding enough to be enforceable. It is that enforceability which is linked to the notion of feasibility we have talked about that makes the right a “valid” or “full-fledged” concrete right. If the institutions of enforcement are weak, it may not actually be enforced. But that does not make it any less “binding” or “valid,” because actual “enforcement” concerns with issues separate from the logic of “enforceability,” which is essential for cogency of the right. Even for legal rights, Maurice Cranston distinguishes between “positive” legal rights, which are enjoyed by everyone under a given jurisdiction, and “nominal” legal rights, which are not enforced but still play a role in realizing some major rights. [See Maurice Cranston, *What are human rights*, Ibid, pp. 19-20].

²¹ Thomas Pogge (2003), op. cit, pp. 2-3, pp. 7-8.

admissibility of rights.²² If a right qualifies for these tests, then that should be sufficient to make it plausible. The legitimacy test links it to the moral judgments of paramount importance to raise the claim for that right to the level of a human right. The procedures to be followed would make such moral judgments largely, if not universally, shared and not arbitrarily advanced. The “coherence” test links it to the duties whose plausibility depends on (a) whether performance of these duties enhances the likelihood of realizing the right—the higher the likelihood, the more plausible is the duty; and (b) the opportunity cost of these duties should not be too high, in the sense that the alternative values that are sacrificed by performing these duties should not be generally unacceptable. The example given by Pogge of an affluent person asked to contribute \$10 to save a child in Mali can be used to explain this point. If that affluent person is a member of a society that recognizes the universal right of a child to live, wherever he lives, he has at least an “imperfect” obligation that if he can help, he should help. However, if helping means he has to sacrifice a lot of income and give up a lot of alternative “values,” it may not be plausible; not because the beneficiary is some unknown child from Mali, but because that obligation is not “enforceable,” with a high probability of leakage or diversion to other uses, even if a law is enacted for that purpose. However, if the State of that affluent person, equally obligated to help realize the right, provides a substantial amount of aid to Mali that would save a large number of poor children there, asks that affluent person, and others in a similar position, to pay a cess or tax of \$10 only per head to finance that aid, he should be “perfectly” obligated to help because what a single or isolated \$10 contribution by him could not do, the totality of contributions from all would do. This is basically the argument for redistributive taxation within a nation-state for the rich helping the poor, and human rights commitments extend the argument beyond the borders of the State. The “plausibility” then depends entirely upon the ability of the duty-bearers to design a program or realize the human right, at a reasonable cost, if that right is recognized by the society.²³

Section 3: Identification of the Right, the Right-Holders, and the Obligation

In this section, I shall consider the issues related to the identification of the right whose violation can be regarded as poverty. There are many characteristics of

²² Qualifying for these tests is an effective answer to the charge about proliferation of human rights. Unless a claim is put to these tests, it should not be admissible for being treated, with all the policy implications, as a human right. These are built on Sen’s notions of “the legitimacy critique” and “the coherence critique” of human rights. (Amartya Sen, *Development as Freedom*, Oxford 2001, pp. 228-233). To sum up the arguments, it can be said that for a claim to be regarded as a right, it has to be justified, normatively and procedurally in a way that provides legitimacy to the right. It should also be possible to identify the correlated duties, assignable to different duty-bearers, which would enable the realization of the right and which would lend “coherence” to the right. (See Arjun Sengupta, “The Human Right to Development,” *Oxford Development Studies*, June 2004).

²³ The reasonableness of the cost, reckoned in terms of alternative values foregone, should be, logically, limited to the loss of other human rights, because human rights are supposed to “trump” other priorities or values. If paying for fulfilling a human right costs resources that sacrifice values other than human rights, such as armament expenditures or extravagant luxuries, that should give way to funding a program for human rights, inside or outside the boundaries of the nation-state. Here the logic of the human rights action and the political practicality of the program have to be balanced, not on principle, but on the convenience of the real-politik. The same logic applies to individuals: They must contribute to the fulfillment of human rights, domestically and abroad, in preference to any and all “other priorities or values.”

poverty that provoke different responses—a feeling of helplessness, a sense of indignity, and intensity of anguish. My aim will be to steer clear of such sentiments and to define the right in a way that has the maximum chance of being fulfilled by removing the “violation,” and to actually eradicate poverty in the shortest possible time. The purpose is to look for a practical way of solving the problem of poverty and not entering into the polemics of the historical origin of poverty or injustices of the current global system.

The right has to pass the tests that qualify a human right. That means its moral and procedural legitimacy should be universally accepted and the obligations associated with that could be specified and assigned to all the duty-bearers, the nation-states, the international community, corporate sectors, and individuals and taxpayers. The duties should be not only practicable but also reasonable in terms of costs and efforts. More importantly, the right should be composed of, or derived from, internationally recognized human rights. It should not be necessary to campaign for launching a new human right in international law through a long-winding procedure of intergovernmental negotiations. It is, of course, not essential to get this right recognized in international law because, as we have seen, a moral right accepted universally could have a far-reaching binding power for its obligations and for effective enforcement. But its appeal would fall short of the force of a legal right because then the obligations for its fulfillment are backed by remedial actions and other disincentives, increasing the likelihood of its realization.

Seen from this perspective, defining poverty as the “lack of secure access to sufficient quantities of basic necessities, such as food, water, clothing, shelter and minimum medical care” or sufficient income or purchasing power to have a command over these basic necessities would only be the first step towards the recognition of such lack as violation of human rights. Lack of these basic necessities would create conditions of existence without any dignity, self-respect, and freedom, or in short, without any human rights. But availability of these would not necessarily fulfill human rights. It is the access to these necessities in a manner consistent with human rights standards of equity, non-discrimination, participation, accountability, and transparency, together with availability, that make them satisfy human rights. A society of slaves having all these basic necessities will not be reckoned as enjoying human rights, not just because they lack the right to liberty but because those necessities are not provided in a rights-based manner. Any program of action towards providing these necessities as human rights must be formulated to conform to these human rights standards.

It is important to highlight this point to distinguish a purely economic program of supplying the basic necessities from a program for fulfilling human rights, which can be regarded as foundational objectives of a society. They command the first claim on resources and efforts of all agents within that society and in the outside international community. It would therefore be more appropriate to define poverty not just as the lack of sufficient quantities of basic necessities, but as the lack of, or the violation of, the right to these basic necessities, such as the right to food, the right to health, the right to education, and the like. These rights have in effect all been already recognized in international law through the Convention on the Economic, Social and Cultural Rights. When these necessities are claimed as rights, they would imply being claimed and fulfilled in a rights-based manner. It may be necessary to

have some consensus about the notion of “basic” or “minimum” that can be physically or culturally determined; and once that is done, the right to different basic necessities can be fairly clearly specified. It should be possible to extend the notion of the right to basic necessities to some of the civil and political rights essential to ensuring eradication of poverty as fulfillment of human rights. Poverty can then be described as the violation of the rights to basic necessities and the rights to some basic freedoms.

But who would be the right-holder in this context? In a general human rights framework, everybody should have the rights to basic necessities and freedom. But that cannot be the basis of an anti-poverty program. It should be targeted to a group of people, identified or defined as “poor” or “extreme-poor,” otherwise it will be “open-ended.” Suppose it is argued that the right to basic food needs to be satisfied with the provision of free food; it will be unmanageably expensive if everybody is supplied with that provision, although it will mean that the poor will also get that food.

It is possible to invoke in this context the conventional definition of the poor in terms of the per capita income or expenditure, such as people living below \$1 a day (as extreme-poor) or \$2 a day (as poor), in terms of some purchasing-power parity value of the currency. There is much debate about the appropriateness of this poverty-line, and ultimately it has to be decided by some kind of a consensus about the minimum income that separates the poor from the non-poor. Whatever may be the consensus or the acceptable definition, the category of the people identified as “poor” can then be described as the right-holder whose right is to be free from poverty; i.e., to be free from the violation or absence of the right to basic necessities.²⁴

Clearly the right whose violation is regarded as poverty in this sense is a composite right, constituted by all the different rights to basic necessities, and plausibly also by rights to basic freedoms. But how does one determine that the composite right is violated, when some of the component rights have been successfully promoted but one or two of them have actually regressed or deteriorated? What kind of rules would need to be formulated to compare the progress or regress of different rights when human rights by definition do not admit any trade-off? If poverty has to be regarded as the violation of all the rights to basic necessities, its incidence will be limited. If poverty is taken to be the violation of even a single such right, even if other rights are fulfilled, the scope of poverty can be unreasonably large.

Furthermore, these rights can be realized mostly over a period of time, progressively, as it is described in the human rights literature, because of the resource constraints and also because of the time taken for the institutional adjustments. How does one assess the intermediate stages, when the rights have not been fully realized but are in the process of progressive improvement? Suppose that having x amount of grain for all the people identified as poor is a necessary condition of fulfilling the

²⁴ The human right of a category of people called “poor” is no less a universal right than any other human right. Universality means any human being who is in a position to claim the right can be a right-holder, irrespective of caste, creed, or citizenship. The obligations corresponding to that right are also universal, meaning all agents have obligations, perfect or imperfect, to fulfill the right. Only the category of people qualified as poor will be in a position to claim that right.

right to food for them, and that the country has reached a stage when three-fourths of the poor (compared to half of them previously) have that amount of food, is the right to food still violated or is it being increasingly realized?

These issues are important when we move from expressing anguish at the prevalence of poverty to the stage when policies are actually designed and implemented to remove poverty. As mentioned earlier, the policies and the conduct of the duty-bearers are the main concerns of the claimants of human rights.²⁵ There is a good deal to gain if appropriate policies are in place and are implemented, fulfilling the obligations of conduct, even if the obligations of result are not fully realized. In fact, it is possible to argue that in many cases where the realization of the right may take a long time but policies exist that have a high likelihood of producing the right, then those policies themselves can be claimed as a right, assigning the responsibilities of carrying out those policies to appropriate agents and setting up proper mechanisms for monitoring and remedial action.²⁶

From that perspective, the right whose violation is regarded as poverty, or more simply the right to poverty eradication, may be much better tackled in terms of appropriate development policies that are most likely to remove or eradicate poverty and which can be claimed as a right itself. This right can be formulated more effectively in terms of the right to development, a right that has been recognized as a human right by the international community through the Declaration on the Right to Development of the United Nations (1986), followed by the Vienna Declaration of 1993.²⁷ 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. It is a composite right of incremental realization of all the rights, and it is a process, in the sense that these rights are interdependent over time, with changing social and institutional arrangements. The composite right improves, that is, is increasingly realized, if some rights are improved, but no right regresses or is violated. It is regarded as development because development means expansion of freedoms and rights that improve the well-being of all the people.

The “obligation” corresponding to the “right” to development is a development policy adopted and implemented by the primary duty-bearer, the State, in association with the other duty-bearers. First, it must coordinate sectoral policies

²⁵ These issues have been discussed extensively by the International Law Commission in terms of “obligations of conduct” and “obligations of result,” International Law Commission, UN Doc. A/CN.4/Sev.9/1996.

²⁶ Amartya Sen talked about a meta-right, while discussing the right not to be hungry or the right to food, which may not always be possible to guarantee for all persons in a country in the near future, though “policies that would rapidly lead to such freedoms do exist.” So a right to x, such as not to be hungry, or the right to adequate means of employment, may be an abstract background right, but the right to demand that policy be directed towards securing the objectives of making the right to food or the right to adequate means of livelihood a realizable right is a right to p(x), as a meta-right to x, will be a real right. Amartya Sen, “The right not to be hungry,” in Philip Alston and Katerina Tomasevski, *The Right to Food*, SIM, Netherlands, 1984.

²⁷ See Declaration on the Right to Development (1986) and the Vienna Declaration (1993). See also Arjun Sengupta, “The Theory and Practice of the Right to Development,” *Human Rights Quarterly*, November 2002.

relating to each of the rights. Second, it must pursue an overall policy of economic growth, and thereby relax the resource constraints. Third, it sets up institutions that facilitate the realization of all or most of the rights. Such a development policy would have a high likelihood of realizing these rights, but may not always be able, within a short period, to actually realize all of them. In that case that development policy can be treated as the obligation corresponding to the right to development or as a “meta-right,” with all the characteristics of a “real right,” which can be claimed by the right-holders of the identified human rights; i.e., the recognized economic, social, and cultural rights, as well as the civil and political rights.²⁸

Poverty then can be described as the absence or the violation of the right to development of the category of people identified as “poor.” Removing poverty would then imply adopting policies to raise the level of income of the poor so they can cross the poverty line and secure basic needs, such as food, health, shelter, and education, to the extent they are considered necessary. Together, they would expand the capability of the poor, and the policies would contribute to the removal of both income poverty and capability poverty. This approach is much more realistic and flexible than being fixated at satisfying targeted amounts of basic needs. The concern would be with creating conditions for removing poverty, in terms of both capability and income poverty, progressively over a given period. The policies for that should be formulated to suit specific economic and social contexts of the country and have a high, if not the maximum, likelihood to succeed. But as there is nowhere a one-to-one correspondence between any specific policy and the targeted outcome, or between the obligations of conduct and the obligations of result, the rights may not be fully realized as intended. The trends will be firmly set, and the social arrangements established to achieve the results and realize the rights as early as possible.

We need not get bogged down in controversies about whether such a right is a moral right or a legal right or whether non-fulfillment of a right is a violation or a

²⁸ If D^* is the process of development that can be claimed as a human right, then $D^* = (\Delta R_1, \Delta R_2, \dots, \Delta R_n, \Delta Y^*)$, where ΔR_i is improvement in the realization of the i^{th} right represented by increment in the indicator of that right and Y^* is the rights-based growth of income that does not increase inequality, discrimination, and is participatory and accountable. Such economic growth enters the argument both as an instrumental and a substantive variable. Without such growth, a sustained realization of the rights, all of which consume resources, is not possible, and for the rights to be realized following human rights standards, it must be rights-based itself. It has also a substantive value because technically all other objectives of development not captured by the fulfillment of rights are represented by that growth. It is also because most developing countries consider economic growth that is equitable and just as desirable in itself. ΔR_i represents all recognized rights, civil and political, as well as economic, social, and cultural rights, and those recognized later. The constraints imposed on them for inclusion in the overall index of the right to development is that they have to be non-negative. Some of the rights may not improve while others do, but none can regress; i.e., no right can be violated. [For all these, see Arjun Sengupta, Asbjorn Eide, Stephen Marks and B.A. Andreassen, “The Right to Development and Human Rights in Development” presented in the Nobel Symposium, Oslo, October, 2003].

Development policy that is the corresponding obligations, primarily of the State, but coordinating with other duty-bearers, can be formulated by fixing all the ΔR_i , as targets, following the obligation of results and the adopting policies for sectoral developments and overall economic growth, with both internal consistency and respect for human rights standard, fulfilling the obligations of conduct. [The Maastricht Guidelines (University of Utrecht, January 1997) spells out, “The obligation of conduct requires actions reasonably calculated to realize the enjoyment of a particular right. . . . The obligations of result requires States to achieve specific targets to satisfy a detailed substantive standard” (para 7)].

denial of right. A legal right entails legal obligation, and if that obligation is not carried out, it is an act of violation for which the duty-bearer is reprimanded or penalized, whether or not that is directly causing non-fulfillment of the right. A moral right entails moral obligation, and a duty-bearer is expected to do what he or she should do, but is not legally bound to do. He or she would not even be morally bound to obligation, unless it can be shown that not carrying out that obligation causes the non-fulfillment of the right, when it would be a case of “violation” for which the duty-bearer would be held accountable and morally reprimanded. These issues lose their relevance in the case of a human right, which begins as a moral right but ends up as a legal right, or a “binding” right, which is enforceable either by the judicial system or by different administrative and institutional measures. The relevant issue is not whether the non-performance of the duty causes the non-fulfillment of the right or a violation of the right, but whether the obligation is “perfect” when the duty can be specified and the duty-bearer identified, and whether that duty has a “direct” impact, and the size of the impact is significant on the fulfillment of the right. In a complex, interdependent system with “indirect” and “contingent” duties of the different duty-bearers accentuating or neutralizing the direct impact of any action, it would be difficult to identify any activity as directly causing the violation of the right, unless the size of the direct impact is sufficiently large to clearly establish the case of a violation.

As discussed earlier, the distinction between the violation of a right and the denial of a right would get blurred in such cases. If a policy or action “P” has a large positive impact on the right “R,” and a non-action “-P” leads to a regression of the right “-R,” then such non-action would be equivalent to violation, provided of course the duty-bearer is aware of that effect. If there is a famine in a country, if there is a surplus food in a neighboring country which could without much difficulty mitigate the famine if distributed there, and if the government of that country is aware of that, then if it does not act to distribute that food there it will be responsible for “violation” of the human right of freedom from hunger. It does not matter whether or not that government is responsible in any way for causing the famine in the first country. The crucial relation that determines the obligation is whether the other agent, the government of the neighboring State, which had recognized freedom from hunger as a human right, can adopt any policy which impacts on the famine of the first country, and to what extent.

To sum up, therefore, poverty can be regarded as a violation of human rights, provided the content of those rights can be properly identified, such as our notion of the right to development of a group of people defined as “poor,” and provided the corresponding obligations can be properly specified and assigned to different duty-bearers.

Section 4: The Duty-Bearers

Who are these duty-bearers that have the obligations corresponding to the right whose violation is regarded as poverty? What kinds of duties are to be assigned to the different duty-bearers to realize the right to development of the poor? In this section, I take up these issues to wrap up this paper on poverty as a violation of human rights.

It is the State that is the primary duty-bearer of this right, just as it is with all other human rights. The State or the government of the country to which the poor belong would have the responsibility of formulating and implementing a development policy, because it has the power and authority to frame laws and regulations and adopt policies that affect all individuals in its jurisdiction. The policies can be carried out in practice, respecting the views of all parties that have some role to play in fulfilling the right. As the right to development is a composite right of at least the basic, or core, rights to food, health, shelter, and education, the State has to formulate sectoral policies of ensuring rights-based access and availability of corresponding goods and services, and then coordinate them as a program that promotes overall economic growth, in a manner that secures sufficient increased income of the poor to rise above the poverty line and remove the resource constraints in the individual sectors.

The State playing this role does not mean that the markets are not going to play their role in resource allocation with efficiency and over time. It is a misunderstanding of the human rights principle to think that it promotes an interventionist or dirigistic State as opposed to the market mechanism. Human rights are addressed to the State because that authority can directly violate or promote the different rights and help or prevent other agents from promoting or violating them. In playing that role, the State must work on the existing relationship between all the actors in an economic, political, and social system. For removing poverty or promoting development, the State must build on the market forces that govern the economic relationships as an objective reality. If a free-market mechanism can achieve the rights-goals, it must protect and promote free markets. If achieving those goals calls for channeling and influencing the market forces in a particular direction, the State must do so, without denying the reality of market interrelations. The State has to operate on those relations, leveraging them and intervening on the margin and occasionally restructuring them, but never try to replace them as that has very little chance of success. The development programs discussed here for realizing any right to development are quite different from the earlier central planning, not only because they cannot do without operating with the market mechanism to have a real chance of success, but also because they have to be participatory, with decentralized decision-making and popular accountability in order to be consistent with the human rights standards.

One implication of this is that to ensure the fulfillment of rights, the determinants of demand and supply of goods and services and the incomes and purchasing power, or the “entitlements” of those who are claiming the rights, have to be assessed dispassionately before ascribing specific roles to different agents to carry out their obligations.²⁹ This would be very complex, and more often than not it may

²⁹ See Amartya Sen, “Food, Economics and Entitlements” in Jean Dreze, Amartya Sen and Althiar Hussan (eds.) *The Political Economy of Hunger*, Oxford, 1995, where he warns against any instant economic or simple explanation in terms of vested interests and calls for serious examination of the problems of “acquirement” and “entitlement” of food of different person to work out a program for a “freedom from hunger.” For a flavor of the complexities, just consider the following statement: “A person has to starve if his entitlement set does not include any commodity bundle with enough food. A person is reduced to starvation if some changes either in his endowment (e.g., alienation of land or loss of labour power due to ill health) or in his exchange entitlement mapping (e.g., fall in wages, rise in food prices, loss of employment, drop in the price of the goods he produces and sells), makes it no longer possible for him to acquire any commodity bundle with enough food.”

not be possible to ascribe to any agent the responsibility of “causing” the non-fulfillment of the right. But nevertheless it should be possible to work out a program to influence the different agents to play specific roles, singly and together, to realize that right. Once those roles are specified, if the agents do not play their roles, they can be determined, in terms of our analysis, to have “violated” that right. The State, as the primary duty-bearer and as the sovereign authority over divisions within its jurisdiction, will have to be responsible for designing the program and specifying the roles of others.

The issues are much more complex when the role of other States and institutions are considered, such as members of the international community, who are also duty-bearers for an international human right, such as the right to development or the composite of the rights to food, health, education, and standard of living, which are the minimum core rights, whose denial would be poverty. All of them operate within an international framework of rules and procedures, and all of them have a responsibility, either through “direct” actions or through “indirect” and “contingent” measures, to enable the fulfillment of the right.

In the international legal system of sovereign States, international relations are based on a horizontal inter-State system; i.e., the States deal with other States, while the human rights of the citizens pertain to a vertical relationship between a State and its subjects. Even though the human rights are accepted as universal, irrespective of the citizenship of the right-holders, implying that a denial or violation of a human right anywhere is the concern of all agents, everywhere, it is only rarely that States get into a diagonal relationship with individuals in other States facing a gross violation of human rights.³⁰ In such a situation, if there is a violation of a human right of an individual or a group of individuals (such as the poor), the international community can intervene to remove that violation mostly through the inter-mediation of the States. Similarly, if the international community is to be held responsible for that violation, the role of the intermediary State has to be shown as neutral or ineffective in the transmission of the effects of action of the international community on the individual right-holders within the concerned State.

A closer scrutiny of the issues reveals how difficult it is to hold the international community responsible for the violation of human rights in a country, if violation is linked to “causation” and not, as we have defined “non-performance,” when a positive action could prevent poverty. It is of course possible that external activities of a State may have human rights effects on citizens of other States, and it may therefore have obligations to mitigate or compensate those effects. These may pertain to effects on environment, trade, technology, or security. The adverse effects may be so blatant or so one-sided that the intermediary States where the affected people live cannot or do not have any reason to do anything to neutralize those

³⁰ See Sigrun I. Skogly and Mark Gibney, “Transnational Human Rights Obligations,” *Human Rights Quarterly*, August 2002; and Allan Rosas, *State Sovereignty and Human Rights: Towards a Global Constitutional Project XLIII*, Pol. Stud., 1995. Except in cases of humanitarian intervention and economic sanction or in the use of “optional protocols,” no State can usually intervene in another State directly in favor of a third party suffering from a human rights violation. On the responsibility of the international community of States to protect human rights, see also Margot E. Salomon, “Globalization of Responsibility: Interdependence and Cooperation in the Protection of Human Rights, in *International Law*” (Ph.D. Dissertation, London School of Economics and Political Science, December 2003).

effects. The obligations of the States to prevent these human rights effects would be clear enough to call for a remedy, but still may not be clear enough to be linked to the aggravation of poverty.

In most other cases of external effects of a State's activity, there would be a complex relationship with the activities of the other concerned States. For example, take the case of the opening up of international trade under globalization or the protection of the intellectual property rights. The international rules governing these transactions may cause severe adverse effects on many developing countries. But still the States of those countries may often, through international negotiations, agree to these rules, expecting some returns in some other areas, or by a larger quantity of benefits in some other period, or to protect the interests of some special groups or lobbies more powerful in these States. Who should then be held responsible for those adverse effects? Unfortunately, that has been mostly the reality of interrelation, or negotiations on international trade, between developed and developing countries. Only when it can be established that the developing countries were helpless and had little option but to acquiesce to the dictates of the richer nations, can the latter be held directly responsible for the unequal and often unjust rules that adversely affect the overall development of a developing country. The States of the developing countries who negotiate and interact with the other developed country States often represent special groups, and not their whole people or the poorer sections of the people. So even when alternative negotiating strategies or policy programs exist that would make most of their people better off, they choose the option which is inferior in terms of the interests of the majority of the people, but more suited to smaller special groups.

It is not that developing countries are always guilty of complicity in a relationship with the richer States, in acting against the interests of the majority of their people. They may or may not be representative of all people, particularly the poor people. They may or may not have the flexibility of pursuing a course that would be most beneficial to them. Even when the trade and investment rules allow their economic growth to increase and production structure to change for a sustainable and substantial improvement of the whole economy, they may fail to protect, promote, and fulfill the human rights of the poor and thus eliminate poverty. In all such cases, to consider that the international community is responsible for continuing poverty without considering the role played by the intermediary nation-States where the poor live will not be reasonable.

When earlier in the 1970s the developing countries were calling for a new international economic order, they were talking about equity in the decision-making and the sharing of benefits of international transactions with the industrial countries, and they were talking of a right to development of the States of the developing countries. That was a logical step in an international relationship between nation-states with "horizontal-equity," all States having equal rights. It was possible to argue that international law should concern itself with a just and fair relationship between the States, and the "vertical" relationship between the States and their citizens should be treated separately, through constitutional reforms within the sovereign States. But when the claims of equality of relationship are advanced in terms of human rights, such as the right to development, vertical relations also come within the purview of discussions. It would then be essential for the developing countries to show that their

states were truly representative of all their people and that mechanisms existed to translate the fulfillment of the rights to the benefits of the individuals who were the effective claimants of those rights. In a similar vein, if poverty is described as the violation of the right to development of the poor people of a country, whose eradication is the obligation of all agents in an international community, it will be essential to demonstrate that mechanisms exist to transmit the benefits of international action to actually fulfill the right for the poor people of the country.

For all of these reasons, it is much better to look for effective mechanisms of international cooperation, which is the term that has been used in the international covenants and also in the UN Charter. International cooperation, thus understood, implies that the international community is to cooperate with national authorities to fulfill the right to development and to eradicate poverty of the poor people in those countries. There are certain steps that the international community must adopt that enable the developing countries in general to have freer trade, better terms of investment, technology transfer, and foreign aid that directly affect all people of the developing countries. These are like the “diagonal” relationship between the developed countries and the people of the developing countries. These have to be complemented by direct international cooperation with the State authorities, indirectly impacting on the citizens of these countries, together with different contingency facilities available to those States in case they need to resort to them. This relationship may be conceived in terms of a development compact. If the developing country States set up a program for rights-based development that eradicates poverty and fulfills the core rights to basic needs, such as food, health, education, etc., as discussed above, of the poor, then the industrial countries enter into commitments of international cooperation, as the need may be, of aid, trade, debt, and finance, which would facilitate the developing country States to fulfill their programs.

In this perspective, the obligations of the international community can be clearly defined. If such programs exist, and if developing countries can set up appropriate mechanisms to implement these programs and translate the benefits clearly to the poor, the industrial countries have an unequivocal obligation to play their role. If they do not play that role, they violate the human right to be free from poverty.