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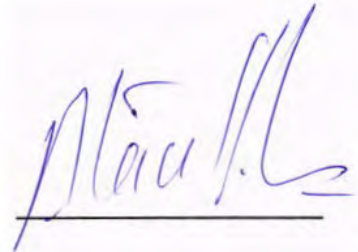
APPROVAL SHEET

This is to certify that we evaluated the thesis titled "**Human Rights Obligation of the World Bank and the IMF with Special Reference to their Lending Policies**" submitted by Mr. Adnan Ali Khan under university registration No.110-FSL/LLMHRL/F-12, in partial fulfillment of the award of the degree of master of Law (LLM) in Human Rights Law. This thesis fulfills the requirement sin its core and quality for the award of the degree.

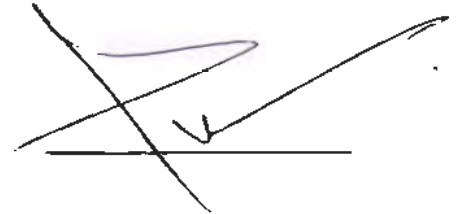
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Dedication

To My Mother....

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Adnan Ali Khan

DECLARATION

I hereby declare that this thesis, neither as a whole nor a part of it, has been copied out from any source. It is further declared that I have prepared this dissertation entirely on the basis of my personal efforts made under the supervision of my supervisor **Dr. Muhammad Mushtaq Ahmad**. No portion of the work, presented in this dissertation, has been submitted in the support of any application for any degree or qualification of this or any other learning institute.

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Abstract

The World Bank and the International Monetary Fund are both intergovernmental institutions which were created to support the structure of the world's economic and financial order. The activities of these two institutions have been criticised because of their negative impacts on human rights. Through their coercive conditionality arrangements these institutions have great influence on the life of the people in the developing states. Therefore, it has been argued that under the UN Charter, customary international and general principles of international law they should be held responsible for all aspects of its influence and should not be exempt from the international human rights legal regime. Although, under international human rights law the primary obligation holders are the states i-e to respect, to promote, and to fulfill human rights obligations and to equate the legal obligations of the state and these institutions is to stretch their legal mandates, however, at minimum they are under obligation to respect human rights concerns in their lendings. Nevertheless, if they choose to promote or to fulfill human rights obligations it is legitimate for them under international law.

CHAPTER 1

THE BANK AND THE FUND: HISTORY, MANDATES AND ATTITUDES TOWARDS THE HUMAN RIGHTS

Introduction

The purpose of this chapter is to explain the factors behind the formation of the World Bank (hereinafter the Bank) and the IMF (hereinafter the Fund) followed by a brief history of the two institutions. The chapter aims to analyse the purpose and legal mandate of the two in addressing their Articles of agreement as they stand today. Then the relationship between the Bank and the Fund will be discussed and their respective influence on the borrowing states. The evolution in operations of the two institutions will provide how these institutions have responded to the changes in the global economy. While in order to adjust to these changes they have expanded their area of operations and as a result it transformed their roles as the potential obligation holders of the human rights. Further, the attitude of the two institutions towards human rights and their effects of ignoring these issues will be analyzed. The function of the chapter is to give the

readers good insight into the working of the two institutions in general so as to make the remaining chapters easy to understand and comprehend.

1.1 Tracing History and Reasons for the Creation of the Two Institutions

The World War I brought a difficult time for the world economy which finally resulted in the stock market crash of 1929 and the subsequent depression of 1930.¹ This brought about the general lack of confidence on paper money and the increase in demand for gold beyond what the state could supply.² As a result the state's stock gold and currencies that could be changed into gold become depleted and thereby slow down monetary transactions among them. Many argue that the rise of Nazis in Germany was also because of the depression.³ These developments led to the sense of insecurity in the allied states that they would face the same situation after World War II (WWII) and, therefore, the Bank and the Fund were chartered as a result of negotiations among 45 states at a conference from 1-22 July, 1944, Bretton Woods, New Hampshire, USA.

Although, many states were represented at the conference but USA and Britain were most in attendance and dominated the negotiations.⁴ The charter was considered as a turning point in changing; world economy, history and global relation. The founding fathers of both the Bank and the Fund were American scholar Harry Dexter White, who

¹Bahram Ghazi, *The IMF, The World Bank Group and the Question of Human Rights* (Ardley, NY: Transnational Publishers, 2005), 1.

²Ibid.

³Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF* (London: Cavendish Publication, 2001), 15.

⁴Michael Goldman, *Imperial Nature: The World Bank and Struggles for Social Justice in the Age of Globalization* (New Haven, CT: Yale University Press, 2005).

was allegedly a Soviet spy,⁵ and the British economist John Maynard Keynes,⁶ two brilliant economists of early twentieth century.

The changing economic order and the shocks of Great depression made the western states to decide between 'internal independence and international stability'.⁷ Therefore, the states had become more responsible and reacted by creating economic order which was different from laissez faire regime of nineteenth century and protectionist regime of 1930s.⁸

According to one opinion there are three main reasons that set the stage for Bretton Woods Conference.⁹ First, concentration of power was mainly in the hands of North America and Western Europe, because the communist Eastern European states were generally isolated from the World economy making Euro-American states the ultimate decision makers for the world economy. Moreover, the newly independent states or the so-called Third World were also not a hindrance in the way of Euro-American nexus.¹⁰

The second reason making Bretton Woods possible is the common interests shared by the powerful states, mainly their belief in capitalism, and after WWII, classic liberalism tempered by Keynesianism.¹¹

⁵Arnold Beichman, *Guilty as Charged*. HOOVER DIGEST, 1999, available at: <http://www.hooverdigest.org/992/beichman.html> (last visited on 15/08/2014).

⁶ For detail study on his life see Robert Skidelsky, *John Maynard Keynes: 1883-1946: Economist, Philosopher, Statesman* (USA: Penguin Books, 2005). It is a three volume biography and considered to be the most authoritative work on life and achievements of John Keynes.

⁷Richard Peet, *Unholy Trinity; the IMF, the World Bank and WTO* (London: Zed Books, 2003), 30.

⁸Ibid. This time the compromise was between domestic autonomy and international norms.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

The third reason was the emergence of USA as a world leader and its readiness to assume that position. The position of America was also amplified by its strong economy enjoyed market with consumer goods, productive capabilities and a strong currency. Hence at the end of WWII for the supervision of new world situation, the creation of such institutions was evident.¹²

1.2 Mandates of the Two Institutions

Although the factors behind the creation of the two international financial institutions (IFIs) were the same, however, they were given quite distinct mandates. Therefore, it is pertinent to discuss their respective mandates separately.

1.2.1 The Bank's Mandate

The term 'World Bank' refers to International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA). The World Bank is a specialized agency of the United Nations through an agreement entered into with Economic and Social Council of the United Nations in accordance with Articles 63 and 57 of the UN Charter.¹³ The IBRD was established alongside the Fund in 1944. The IBRD's Articles of Agreement state that the purposes of the IBRD include "to assist in the reconstruction and development of territories of members," and "to promote the long range balanced growth of international trade and the maintenance of equilibrium in balance of payments thereby to assist in raising productivity, the standard of living

¹² Ibid.

¹³ Agreement between the United Nations and the International Bank for Reconstruction and Development, 15 November 1948.

and conditions of labor in members' territories."¹⁴ The IBRD mainly focuses on the middle income and credit worthy poor states.¹⁵

The IDA was established in 1960 and focuses the poorest countries in the world.¹⁶ It provides loans to the poorest countries of the world on extremely soft terms.¹⁷ The Articles of Agreement of IDA states its purposes, it states "to promote economic development, increase productivity and thus raise standards of living in the less-developed areas of the world . . . thereby furthering the developmental objectives of the International Bank for Reconstruction and Development".¹⁸

The Bank was entrusted with the task of assisting in reconstruction of war-torn Europe, and, then to divert its attention to the 'productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.'¹⁹ The Bank supported projects in different states for the development of infrastructure and for the advancement of production facilities.²⁰

At present the Bank has 188 member states,²¹ after becoming its member; each member subscribes Bank's capital, and makes certain payment.²² Unlike the Fund, the

¹⁴ IBRD Articles of agreement, article 1.

¹⁵ Sanae Fujita, "The Challenges of Mainstreaming Human Rights in the World Bank", *The International Journal of Human Rights*, 15: 3 (March 2011), 376.

¹⁶ Ibid.

¹⁷ C. Caufeild, *Masters of Illusion: World Bank and the Poverty of Nations* (London: Macmillan, 1996), 62.

¹⁸ IDA Articles of Agreement, article, 1.

¹⁹ World Bank Articles of Agreement (hereinafter the Articles) article, 1.

Available at: <http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf> (Last visited 15/9/2014).

²⁰ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 15.

²¹ Available on: <http://www.worldbank.org/en/about/leadership/members> (last visited on 29/09/2014).

²² The Bank Articles of Agreement, Article 2.

Bank finances its loans, credits and guarantees mainly by raising money on the private financial market.²³

The framework of Articles of agreement provides, the Bank to develop its activities through projects and programmes. 'Projects' are defined as development projects for which money is provided. They include projects such as hydroelectric power plants, highway construction, irrigation facilities, etc. 'Programmes' on the other hand covered wider range of issues less easily identifiable. Articles clearly favour project loans. Art III, s 1(a) states that:

The resources and the facilities of the Bank shall be used exclusively for the benefit of members with equitable consideration to *projects for development and projects for reconstruction* alike. [emphasis added].

Article III, s4 (vii) provides that:

Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of *specific projects* of reconstruction or development [emphasis added].

Generally, the Bank operates through loan arrangements.²⁴ The loans are usually provided to the member state or any public or private entity or enterprise within the territory of the member state. When the borrower is not a member state then a full guarantee of the member state is taken in whose territory the project is financed.²⁵

²³ See generally *ibid*, Art II and Art III.

²⁴ However, the Bank also provides some non-financial services as well. This was witnessed in the mediation of Suez Canal Crises and the Indus Water Treaty between Pakistan and India.

²⁵ The Bank Articles of Agreement, article III & IV.

The reconstruction period of the Bank was short-lived, as the Marshal plan²⁶ was ready to be implemented in Europe. By 1971, only four loans had been made for the 'reconstruction' purposes. Consequently the main focus of the Bank's operation was on the development side.²⁷

1.2.2 The Fund's Mandate

The Fund, like the Bank, is the specialized agency of the United Nations.²⁸ The IMF was established to 'promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.'²⁹ The Fund also assists in solving balance of payment system, based on par value system of international currency exchange rates that is not destructive either of international and domestic prosperity.³⁰

At present the Fund has 188 members, each member pays a quota, expressed in special drawing rights (SDRs).³¹ The size of quota is determined by Board of Governors.³² The quota is divided into different 'tranches' on the basis of which the members can draw financial assistance. The 'gold tranche' to which the members have automatic access there are four other tranches called 'credit tranches' too for which the

²⁶ The Marshal plan named after the then Secretary of state George Marshal. The plan was in operation for four years beginning from April 1948. It was a financial support of USA to rebuild Europe after WW 2 and to contain the spread of Communism in Europe.

²⁷ E.S Mason and R.E Asher, *The World Bank since Bretton woods: The Origins, Policies, Operations, and Impacts of the International Bank for Reconstruction and Development and the other Members of the World Bank Group* (Washington DC: Brooking Institute, 1973), 239.

²⁸ Agreement between United Nation and International Monetary Fund, 15 November 1947.

²⁹ IMF Article of Agreement, Art I, s1.

³⁰ Ibid, Art I.

³¹ IMF Articles of agreement, Art III, s1.

³² Ibid.

Fund adopts progressively hard standards.³³ Each tranche is 25% of the quota and the last three tranches can be drawn if the member is ready to sign stabilization programme with the Fund and also sign a stand-by arrangement (SBA).³⁴ SBA was first used in 1952. Under this arrangement the Fund provides the Member State a specified amount of money usually for over twelve to eighteen months, to overcome its balance of payment deficits of short term nature.³⁵

However, these policies proved to be insufficient as the member states need more assistance than their respective quotas already provide, therefore, the Fund from time to time adopted different facilities to deal with different problems of the member states.³⁶ Hence, in response to the export instability of the developing states, the Fund in 1963 introduces the Compensatory Financing Facility (CEF).³⁷ Similarly in 1974, another facility- the Extended Fund Facility (EFF) - was added which enabled the member state to draw up to 140% of the quota.³⁸ It supported medium-term programmes ranging from three to four years duration.³⁹ In 1999 another financial facility i-e Poverty Reduction and Growth Facility (PRGF) was introduced by the Fund in which poverty reduction was given priority in concessional lending.⁴⁰

³³ Joseph Gold, *Interpretation: The IMF and International Law* (London: Kluwer Law International, 1996), 78.

³⁴ IMF Article of Agreement, Art XXX(b).

³⁵ Ibid.

³⁶ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 19.

³⁷ G. Bird, *International Financial Policy and Economic Development: A Disaggregated Approach* (London: Macmillan, 1987), 43 as cited by *ibid*, 19.

³⁸ P. Komer, *The IMF and the Debt Crisis: A Guide to the Third World Dilemmas* (London: Zed Books, 1986), 48 as cited by *ibid*.

³⁹ Mac Darrow, *Between Light and Shadow, The World Bank, The International Monetary Fund and International Human Rights Law* (Oxford: Hart Publishing, 2003). Available on: <http://www.worldbank.org/institutional/manuals/textonly.html> (last visited 10/10/2014).

⁴⁰ *Ibid*, 41.

Until the collapse of par value system,⁴¹ the Fund had relatively limited mandate, in other words its job was easy and precise. Its main concern was to monitor the monetary policies of its Member States and to make sure that they are consistent with the maintenance of their currencies' with par value. The Fund also provided short term finance to the member facing balance of payment problem.⁴²

The Fund generally adopted the mechanism for monitoring the Member State exchange rate and balance of payment policies through regular consultation with the concerned state under Article IV of its Articles of Agreement (Article IV consultation).⁴³ These consultations serve to enable the Member State to maintain its par value; the consultation is usually limited to the external variables that effected external value of the State's currency.⁴⁴ Resultantly, the emphasis of these consultations was on macroeconomic issues like interest rates, money supply, government debt, inflation, and account of the balance of payments.

Moreover, there was a condition attached to these Article IV consultations which require the Fund to take into consideration the internal circumstances of the member state. The Articles provide that the Fund '...shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the

⁴¹ The original Articles of IMF required the Member State to establish a fix value for its currency. Each state has to ensure that its currency did not fluctuate by more than 1% above or below that par value. (This was later increase to 2.5 %). The IMF Member States, therefore, were under legal obligation to take corrective measure in case their currency fluctuate more than the describe limit. Daniel D. Bradlow, "The World Bank, the IMF, and Human Rights", *Transnational Law & Contemporary Problems*, 6:47 (1996), 48-89. Electronic copy available at: <http://ssrn.com/abstract=1710636>. (Last accessed 10/10/2014).

⁴² Richard W. Edwards, Jr., *International Monetary Collaboration* (Dobbs Ferry: Transnational Publishers, 1985) as cited by *ibid*.

⁴³ See generally IMF Article of Agreement, Art VI.

⁴⁴ Daniel D. Bradlow, "The World Bank, the IMF, and Human Rights", *Transnational Law & Contemporary Problems*, 68.

circumstances of members.⁴⁵ The Fund interpreted this provision as a prohibition to not indulge in political affairs of the state.⁴⁶

As the scope of operation of the Fund was limited to the par value system, consequently the conditions that Fund attached to the financial assistance it offers were also limited to such as interest rates, money supply, government debt, inflation and budget deficit.⁴⁷ Under the par value system the exchange rate was the primary concern, therefore, in situation of economic disequilibria the burden of adjustment squarely fell on the domestic economy of the country.⁴⁸

In a nutshell the primary concern of the Fund is to attain these macroeconomic goals. It is only after that the Fund engages itself with the Member State how to achieve these targets. However, the exact methods of reaching those targets are left to the discretion of the Member State. As a result this put a kind of restriction on the Fund to intervene in the internal affairs of the Member state.

1.3 Evolution in the Operations of the Two Institutions

The Articles of Agreements of the two institutions were drafted more than 60 years ago, and relatively few amendments were made to them, however the institutions were able to adapt to the changing circumstances. This is evidenced from the changing nature of their operations.

⁴⁵ IMF Article of Agreement, Art VI, s 3(b).

⁴⁶ Joseph Gold, *Political Considerations Are Prohibited by Articles of Agreement When the Fund Considers Requests for Use of Resources*, IMF SURVEY, May 23, 1983. By reading Article IV it seems the prohibition on Fund is much less restrictive than on Bank. Therefore, it is easy for the Fund to adopt a human rights policy.

⁴⁷ Article V, Sec 2 provides that the Member State must use its funds for the intended purposes.

⁴⁸ Jeffrey D. Sachs & Felipe Larrain B., *Macroeconomics in the Global Economy* (Prentice Hall, 1993) as cited by Daniel D. Bradlow, "The World Bank, the IMF, and Human Rights", *Transnational Law & Contemporary Problems*, 68.

1.3.1 Evolution in the Bank's Operation

In its initial years the Bank considered its mandate was only concerned with the issues related to the financial and technical feasibility of a particular project. This was the outcome of the interpretation that development means only economic development, thus it financed only those projects that has direct impacts on the economic growth of the Member State.⁴⁹

However, in 1950s the Bank along with other international conventional institutions, show concern for the broader issues like economic distribution and poverty. It was also partly because of the Bank's presidents personal visits to the third world and witnessed the conditions in those countries along with the bank's missions.⁵⁰

Under the President Woods' presidency (1963-68), with the emergence of newly independent colonial states the need for international finance became ostensible.⁵¹ He broadened the base of support for IDA, expanded the Banks effort to co-ordinate long-term capital flows, especially to Latin America, and established more effective relations with the UN and its other specialized agencies.⁵²

During this period the Bank's focus shift to 'development planning'. It realizes that although economic growth is both essential and sufficient but at the same time, hosts to some other social issues like unemployment and poverty.⁵³ Consequently, in addition

⁴⁹ Daniel D. Bradlow, "The World Bank, the IMF, and Human Rights", *Transnational Law & Contemporary Problems*, 55.

⁵⁰ Richard Peet, *Unholy Trinity; The IMF, the World Bank and WTO*, 115.

⁵¹ Barend A. De Vries, *Remaking the World Bank* (Washington DC: Seven Locks, 1987), 13.

⁵² *Ibid.*

⁵³ Mac Darrow, *Between Light and Shadow, The World Bank, The International Monetary Fund and International Human Rights Law*, 14.

to physical infrastructure projects, the Bank started to finance the development activities related to health, education, agriculture and housing.⁵⁴

Until 1968, the Bank had been engaged in purely sectoral lending for projects.⁵⁵ But under the presidency of McNamara (1968-81) the focus had shifted from financing selected projects in developing countries to include areas like poverty reduction, income distribution and basic needs.⁵⁶ In the words of de Vries, during the presidency of McNamara:

... extended the Bank's objectives well beyond the development of physical capital into the formation of human capital through programmes for education, training, health and nutrition. He deepened the Bank's concern with population pressure, with social and economic inequality, and with population pressure, with social and economic inequality, and with means of improving productivity on which poverty alleviation must be based.⁵⁷

The emphasis of McNamara on poverty alleviation gives way to change in Bank's policy, to include poor segment of the society in its development projects. Although in 1960s the Bank considered the lack of capital as the stumbling block in the development, and that only economic growth would solve the development problems. Consequently, in 1970s the Bank started questioning the so called 'trickled down' approach and advocated the necessity of targeting specific groups within society.⁵⁸ All in all the presidency of

⁵⁴ Daniel D. Bradlow, "The World Bank, the IMF, and Human Rights", 56.

⁵⁵ Namita Wahi, "Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability", *University of California, Davis*, 12:331 (2006), 333-406.

⁵⁶ Nicole Wendt, III, "The World Bank and the IMF Respond to Criticisms: Symposium, The E-Book on International Finance and Development", *Transnational Law & Contemporary Problems*, 9:165(1999), 170.

⁵⁷ Barend A. De Vries, *Remaking the World Bank*, 13.

⁵⁸ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 18.

McNamara expanded the Bank's lending mandate accompanied by shift from project to policy-based lending.⁵⁹

The shift in policy of the Bank towards the end of 1970s was mainly due to two oil shocks, which resulted in decline in price of primary products and drop of income from export.⁶⁰ This resulted in a decline in international trade and adversely affected the economic conditions in developing states thereby aggravated their debt problem.⁶¹ However, the second oil crisis of 1979 showed that the economic difficulties of these countries (particularly Africa) were not of a temporary nature, consequently more and more commentators started to address structural problems in the domestic conduct of affairs rather than external factors.⁶² Mosely states that:

The operational side of the Bank, headed since 1978 by Ernest Stern, had rather little patience with what it regarded as an 'intellectual' (in pejorative sense) approach to Bank policy. For them the concern was less with ways of improving the poverty-impact lending and more with ways of persuading borrower governments to put house in economic order: once this was done, it was maintained poverty would look after itself.⁶³

In 1981 the Berg Report was published by the Bank which required the State to retreat from economic life and that economic activities should be open to the free play of the

⁵⁹Gernot Brodnig, "The World Bank and Human Rights: Mission Impossible?" Available at: <http://www.hks.harvard.edu/cchrp/Web%20Working%20Papers/BrodnigHR&WorldBank.pdf> (last visited 25/10/2014).

⁶⁰Sanae Fujita, "The Challenges of Mainstreaming Human Rights in the World Bank", *The International Journal of Human Rights*, 15: 3 (March 2011), 374–396.

⁶¹Ibid, 380.

⁶²Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 18.

⁶³Paul Mosely, J. Harrington and J. Taylor, *Aid and Power: The World Bank and Policy Based Lending* (London: Routledge, 1989), 21 as cited by Sigrun Skogly. *The Human Rights Obligations of the World Bank and The IMF*, 18.

market forces.⁶⁴ Later the Bank shifted its focus from project lending to programme lending.

1.3.2 Evolution in the Fund's Operations

As already discussed the primary role of the Fund was to deal with the balance of payment problems of the member state and its operations were expected to be of short term nature i-e from 6 months to one year. However, the turn of events has brought changes to the operations of the Fund. The collapse of par system in 1971 formalized by the adoption of Second Amendment to the IMF Articles of Agreement and the economic crisis of the 1970s and 1980s has completely changed the outlook of the Funds operations.

After the collapse of par value system in 1971, it was replaced by market-oriented exchange rate system that allowed the Member States to let their currencies fluctuate in value.⁶⁵ In other words the states were free to formulate their own exchange rate policies. It is this juncture that the Fund was faced with the problem, if the Member State is not bound to maintain any particular value for its currency and can chose its own exchange rate policy, then what actually would be the use of the Fund Article IV consultation with the Member State?⁶⁶

The Amended Article IV provides a limited guidance. It requires the Member States to;

⁶⁴ Ibid, 24.

⁶⁵ Second Amendment to IMF Articles of Agreement in 1978. It also ended basing the exchange rate on gold. Available at: <http://www.imf.org/external/pubs/ft/aa/index.htm> (Last accessed on 10/11/2014).

⁶⁶ Daniel D. Badlow, "Stuffing New Wine into Old Bottles: The Troubling Case of the IMF", *Journal of International Banking Regulations*, 3:1,(August 2001),9-36. Electronic copy available on: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=283288&download=yes.(Last visited 20/10/2014).

- i. endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;
- ii. seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions;
- iii. avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members;
- iv. follow exchange policies compatible with the undertakings under this Section.⁶⁷

This suggests that the language of the Article is not specific, thereby, allow the Fund to monitor any aspect of the member state's economic and financial policies that could have an impact on the 'orderly economic growth', its external balance of payments and the value of its currency. To put it simple the Second Amendment has dramatically expand the scope of the Fund's Article IV consultation. As a result issues like military expenditure, environmental issues, governance issues, and social safety nets (which encompass welfare, housing, and unemployment policies) may also come under the Fund's Article IV consultation.⁶⁸

The Amended Article IV consultation has expanded the range of conditions that the Fund may attach to its financing the Member States. In some case the Fund even attaches more than 100 conditions⁶⁹ covering such issues as privatization, reform of tax administration, adoption of new laws such as bankruptcy codes, and budgetary

⁶⁷ IMF Articles of Agreement, Art IV, s1. (adopted July 22, 1944, entered into force 1945, amended effective April 1, 1978).

⁶⁸ See generally *The IMF and the Poor* (IMF Pamphlet Series No.52, 1998). Available on: www.imf.org/external/pubs/ft/pam/pam52/52.pdf (Last visited on 05/12/2014).

⁶⁹ It was evident in the financial arrangements with Russia and Indonesia, as both contain more than 100 conditions each. For more detail see IMF website: www.imf.org

allocations for health and education, in addition to the more “traditional” macroeconomic condition.⁷⁰

In the same vein it can also be provide that in the Article IV consultations that the Fund may exert influence with respect to human rights situation in the Member State. When the Fund discusses issues like labour policy, health care, and social security with the Member State it actually influence the economic and social rights in the State.⁷¹ Similarly, the statements of senior staff of the Fund both in public and in private about the importance of the rule of law and good governance to development, the Fund can influence civil and political rights in these States.⁷²

However, it is important to mention that the influence of the Fund vary with respect to different states. The first group also called “IMF supplier group’ are those industrialised states, and because of their wealth, their access to alternate sources for funds and for political reasons has no plans for using the Fund’s finance in foreseeable future.⁷³ These states in which G-7 is worth mentioning here considered that that after the Second Amendment they have regained financial sovereignty from the Fund and therefore, they do not heed to its advices.⁷⁴ It was evident in the case of USA when in 1980s the Fund vainly called its government to reduce its budget and trade deficit.⁷⁵ Likewise, the Fund consistently advice the G-7 countries on issues as exchange rates and

⁷⁰ Daniel D. Badlow, “Stuffing New Wine into Old Bottles: The Troubling Case of the IMF”, *Journal of International Banking Regulations*, 5.

⁷¹ Margaret Conklin & Daphne Davidson, “The I. M. F. and Economic and S ocial Human Rights: A Case Study of Argentina, 1958-1985”, *Human Rights Quarterly*, 8 (1986).

⁷² Daniel D. Badlow, “Stuffing New Wine into Old Bottles: The Troubling Case of the IMF”, *Journal of International Banking Regulations*, 5.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ See generally *International Monetary Fund, World Economic Outlook*, from 1982-1986.

interest rates but this has a little influence on the policies of these states. Instead, their policies are influenced by the judgments and discussions take place among them.⁷⁶

On the other side are those states those poor states or states that are using or expect to use the Fund's financing facilities, it is obvious that they heed to the advice of the Fund which as a result will have influence their policies.⁷⁷ These are also called "IMF consumer" states. It is only on theoretical level that the rich and poor states have the same capacity to accept or reject the Fund's advice; however, on practical front the situation is quite different. In other words the Fund has greater influence over poor states than on the rich states.⁷⁸

The oil and debt crises of 1970s and 198s also caused changes to the operations of the Fund. First it has blurred the distinction between the states that were using the services and facilities of the Fund as prior to that the main users were the industrialised states.⁷⁹ In other words the states which are using the Fund's services and facilities now are developing countries. Secondly, the oil and debt crises had also increase the clientele of the Fund which ultimately compel the Fund to extend its operation to overcome balance of payment problems. Because these problems could have not been solved within present parameters of the Fund's short term arrangements, therefore extension in its operations was inevitable.

⁷⁶ None of these states have used the Fund's financial facilities since 1978.

⁷⁷ Daniel D. Bradlow, "The World Bank, the IMF, and Human Rights", 70.

⁷⁸ Ibid.

⁷⁹ Margaret Garritsen de Vries, *The IMF in a Changing World 1945-85* (College of Business, Tennessee State University, 1987) as cited by *ibid*, 71.

1.4 Relationship between the Bank and the Fund

As discussed above the task of the two institutions was the stabilization of global economy after WWII and the reconstruction of war torn Europe by financing both developed and developing countries. In the first thirty years the two institutions were engaged in different economic and financial activities. The Bank primarily provide long term loans to infrastructure projects while the Fund was mainly concerned with the short term loans and provide economic consultations to the developed and developing countries.⁸⁰

Similarly, the sources of funding of the two institutions are also different. The Bank's mostly use the international capital market for its funding, but have no concern with the any particular state shareholdings. The Bank also borrows through selling bonds and notes to governments, their agencies, and central banks.⁸¹ The Fund on the other hand draws its resources from the member state through quota subscription, or member fees. Each member contributes to the pool of resources according to its economic size and strength i-e stronger economies pay more and weak less. The Fund sometimes borrowed from central banks but never from the capital market.⁸² The different roles and sources of funding in the early years clearly separate the financial fields of the two institutions.

However, this distinction in financial fields became blurred after the paradigm shift in the global economy in 1970s. Accordingly, both the institutions have responded

⁸⁰David D. Driscoll, "The IMF and the World Bank: How Do They Differ?" Pdf copy available at : <https://www.imf.org/external/pubs/ft/exrp/differ/differ.pdf> (last visited on 25/11/2014).

⁸¹ Ibid, 4.

⁸² Ibid.

through changes in their functions and advocated for combine application of macroeconomic stabilization, structural adjustment, and institutional reforms. Since 1970s the Fund is facing main challenge from the rise of commercial banks. These commercial banks provide loans to the states on much softer conditions and lower interest rates.⁸³ The states like Malaysia and Thailand used the financial facilities of the Japanese banks with lower interest rates and become able to adjust their business and financial position in the world economy.⁸⁴

In response to these changes the Funds started moving towards the Bank's field. The Fund introduces the EFF (Extended Fund Facility) in 1974, which was generally the Bank's area of operation. Through this facility the amount and duration of the financial assistance was extended.⁸⁵ Another facility called PRGP (Poverty Reduction & Growth Facility) aims at poverty reduction through concessional lending.⁸⁶ The Fund's further encroachment into Bank's area was through Enhance Structural Adjustment Facility (ESAF). It provide near zero-interest rate loans to the eligible countries. The ESAF also widened the Fund's source of funds as it can now collect money from the capital market of some states at reasonable market interest rate.⁸⁷

Similarly, the Bank also realized that for a safe investment and loans a stable macroeconomic environment is a precondition. Therefore, in pursuance of this the Bank started to help many states that were facing economic instability, the function that was

⁸³ Jacques J. Polak, *The World Bank and The IMF: A Changing Relationship* (Washington D.C.: The Brookings Institution, 1994).

⁸⁴ *Ibid.*, 8.

⁸⁵ David D. Driscoll, "The IMF and the World Bank: How Do They Differ?" 12.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

supposed to be that of the Fund.⁸⁸ In 1998, when most of the Southeast Asian countries were facing a financial crisis the Bank and the Fund both offered huge financial support for financial stabilization of these countries.⁸⁹ Traditionally the Bank's loans were mostly project-oriented in which the quality and feasibility of the project were considered.⁹⁰ However, the Bank introduces a new structural adjustment lending; these loans were made dependent upon the general economic policies of the borrowing state and also on the feasibility of the project.⁹¹

The two institutions are closely interrelated, but they cannot be considered as identical twins.⁹² The Bank's Articles of Agreement provide that for the state to become its member it must be member of the Fund.⁹³ According to Polak there may be two reasons for this rule: first it is possible that member of one institution may misuse its rights in the world monetary market. Second, the Bank generally provide loans to those member states that have a stable monetary market, and this can only be ascertained by the Fund.⁹⁴

However, due to blurred distinction in their activities the two institutions are facing criticism from other financial institutions from different countries. The most vocal critique is from Washington Consensus.⁹⁵ The advocates of Washington Consensus use

⁸⁸ Jacques J. Polak, *The World Bank and The IMF: A Changing Relationship*, 10.

⁸⁹ For detail see <https://www.imf.org/external/np/exr/ib/2000/062300.htm> (last visited 15/12/2014).

⁹⁰ Yubo Jiang, "The World Bank and The IMF: Twins or Rivals?" available on: http://econcl10.bu.edu/Ec341_money/Papers/Jiang_paper.htm (last accessed 20/11/2013).

⁹¹ *Ibid.*, 4.

⁹² *Ibid.*, 2.

⁹³ See Articles of Agreement of IBRD, Art II.

⁹⁴ Jacques J. Polak, *The World Bank and The IMF: A Changing Relationship*, 1.

⁹⁵ The phrase was coined by an English economist John Williamson in 1989. Some considered it as a euphemism for "neoliberalism" or "globalization". It is basically a set of rules what was considered to be

this convergence of functions as a weapon to criticize them and their financial policies. Some economists even think that they are breaching the world economy and instead of helping the developing countries they actually aggravated their economic problems.⁹⁶ Even the Fund's chief economist Joseph Stiglitz resigned from his post and criticized the Fund for its absurd policies in the Asian Financial Crisis in the end of 20th century.⁹⁷ In the words of Yubo Jiang as the Bank and the Fund are doing the sole functions of bank or fund thereby "the Bank is more likely running as a fund, while the fund is running lots of functions like a bank".⁹⁸

1.5 Nature of Human Rights

The essence of human rights can be traced back to the theory of right which had origin in ancient and medieval times. Later Britain, America and France had profound influence on its evolution. The Greeks had the theory of rights and justice but there was no concept like human rights in the modern sense. Similarly, the Roman philosopher Cicero also acquainted Romans to the Greek's concept of natural rights.

The Magna Carta of 1215 is considered to be the most prestigious document in the constitutional history of the West. Although, Magna Carta provide some enduring concepts but it was mainly concerned with the protection of the rights of 'propertied class' rather than advocating 'universal human rights' concerns.

the lowest policy denominator by the Washington based institutions to the Latin American states. For more details visit: <http://www.cid.harvard.edu/cidtrade/issues/washington.html>.

⁹⁶Moises Naim, "Fad and Fashions in Economic Reforms: Washington Consensus or Washington Confusion?" 26 Oct, 1999. Available on: <http://www.imf.org/external/pubs/ft/seminar/1999/reforms/Naim.HTM#I> (last visited on 15/11/2013).

⁹⁷ Ibid.

⁹⁸ Yubo Jiang, "The World Bank and The IMF: Twins or Rivals?"

Philosophical explanations have a profound influence on the development of human rights. The shape in which we find human rights today is molded by seventeenth and eighteenth-century Western thinking. The debate about the nature of human rights mainly revolved around whether they are 'natural rights' as given by God, or whether they are the result of man-made laws in the form of legislation or codification. Some philosophers draw a line of distinction between moral and legal rights. By legal rights they mean those rights that have been codified in the form of law, as they were present as moral rights before codification.

Resultantly, the first codification of human rights we find in the form of the Bill of Rights in American constitution of 1787 followed by French Declaration of Rights of Man adopted in 1789. For legal discussion the nature of human rights is understood as given in the Universal Declaration of Human Rights (UDHR) as 'all human beings are born free and equal in dignity and rights'.⁹⁹ In other words these are the rights that every individual possess by virtue of being born human.

Hence, for legal right there are two conditions that must be fulfilled: entitlement and obligation. In other words there must be a 'right holder' someone who must be entitled to the enjoyment of the right and 'obligation holder'. In most case individual is considered as the 'right holder'. Human rights are by nature individual rights but there are some rights that are recognized as belonging to collectivity of individuals also called collective rights. The most common collective right is the right to self-determination as recognized in common Article 1 of International Covenant on Civil and Political Rights

⁹⁹ Universal Declaration of Human Rights, 1948, Article 1.

(ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). The Protocol I, Article 1, of the European Convention on Human Rights (ECHR) also recognized entities other than individual human beings as the holder of human rights; it states that 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions'. In some international instruments, there is more importance given to 'collective rights' than 'individual rights'.¹⁰⁰

On the other hand the notion of 'obligation holder' means someone who is under an obligation to respect or provide whatever the right holder is entitled to. In the case of human rights it is the State or agents of State. It may also be other subjects of international or national law.¹⁰¹

It is generally believed that millions of people have their human rights violated, or they do not have those rights. On the surface it seems like that as these rights are enjoyed by individual by virtue of being human being, hence, the same cannot be taken away.¹⁰² However, this argument misses an important point that although the substance of the right is taken away, the right as such remains. In simple words the right will remain whether respected by the obligation holder or not and the right holder may advance a legitimate demand for restoration of enjoyment of the substance of the right.¹⁰³

The international human rights instruments provide exceptional circumstances under which temporary derogation from these rights is permissible. These include 'public

¹⁰⁰ The African Charter on Human and Peoples' Rights, Articles 19-24.

¹⁰¹ Sigrun Skogly, *The Human Rights Obligations of the World Bank and the IMF*, 47.

¹⁰² R. Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon, 1994) as cited by *ibid.*

¹⁰³ *Ibid.*

emergency which threatens the life of the nation'¹⁰⁴ or 'time of war other public emergency threatening the life of nation'.¹⁰⁵ It is noteworthy that all these derogation are temporary in nature. Moreover, these limitations are very strict and the burden of proof is entirely on the obligation holder (State). It is done so to reconcile individual's rights with the need of the society in general. Additionally, if these rights were made entirely non-derogable then the state would violate it whenever it desired, therefore, human rights were tilted slightly in favour of societal needs in order to check out their unregulated violations by the State.

1.6 Attitude of the Two Institutionstowards Human Rights

As discussed above the two institutions primarily had economic or financial responsibilities but as their range of activities expanded they have confronted with operational issues that required policy judgments. Therefore' while making their policy judgments they were confronted with human right issues. A detail discussion of their policies and their implications on human rights will be given in subsequent chapters; however, it is pertinent here to touch upon the attitude of these two institutions towards human rights.

1.6.1 The Bank and the Human Rights

The human rights issues regarding the Bank have been come under light in many UN human right meetings. Generally the criticism is neutralized by the Bank through interpretation of its Articles of Agreement. According to the Bank Article IV Section 10 which read;

¹⁰⁴ ICCPR, Art 4.

¹⁰⁵ ECHR, Art 15.

The Bank and its officers shall not interfere in the *political affairs* of any member; nor shall they be influenced in their decisions by the *political character* of the member or members concerned. Only *economic considerations* shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.¹⁰⁶ [my emphasis]

The interpretation of the terms 'political affairs', 'decision of political character' and concern only for 'economic considerations' were considered as impediments in considering human as relevant to the Bank. However, this situation has changed since the 1960s when the Bank was criticized in the UN for supporting regimes that violate human rights.¹⁰⁷

By the 1980s the causal relation between the Bank's activities and human rights violation become very prominent. Moreover, the criticism also gained momentum because of the Bank's avoidance in their activities the human rights concerns on the plea that these are 'political' in nature.¹⁰⁸ The response of the Bank was that the recipient state is responsible for the human rights concerns, thereby; ignore its own potential obligation.¹⁰⁹ The Bank mostly maintained this posture during 1990s.

The legal counsel of the Bank Ibrahim Shihata, has stated that the Bank play its role in the promotion of human rights particularly economic, social and cultural rights. He states:

The Bank is joining hands with developing countries and other international agencies in the alleviation of poverty, in combating disease, malnutrition, and illiteracy, and in fighting for the preservation of the environment. It is also seeking an enhanced role for women in development and trying to establish a partnership with developing countries in the gigantic task of economic

¹⁰⁶IBRD Articles of Agreement, Art IV s 10.

¹⁰⁷Sanae Fujita, "The Challenges of Mainstreaming Human Rights in the World Bank", *The International Journal of Human Rights*, 376.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

development. In doing so, the Bank is not only promoting economic and social human rights but is no doubt playing a catalytic role in creating conditions in which all basic rights can develop and flourish.¹¹⁰

This shows that the Bank could play a significant role for the promotion of these human rights but Bank never accept this responsibility as there was no systematic human rights evaluation of its programmes, therefore, it is hard to judge whether the statement was right or wrong. But it does accentuate the potential positive role that the Bank could play for the respect, protection, and promotion of these rights.¹¹¹

However, in late 1990s the Bank has become more vocal in its approach to human rights, in 1998 the Bank for the first time through its publication pronounced its stance on human rights. This publication highlighted the role that the Bank played for the realization of human rights, particularly economic and social rights.¹¹² In this publication it is claimed that 'the Bank has always taken measures to ensure that human rights are fully respected in connection with the project it supports'.¹¹³ But it was unable to explain these measures or the way they have been employed.¹¹⁴

The Bank over the year has increased its interactions with the UN human rights organizations and in particularly responding positively to the request of Committee on Economic, Social and Cultural Rights.¹¹⁵ In 2001 the Bank along with the Fund participated in the official meeting of the Committee through its Special Representative,

¹¹⁰ Ibrahim Shihata, *The World Bank in a Changing World: Selected Essays*, compiled and edited by F. Tsofen A.R. Parra (Dordrecht: MartinusNijhoff, 1991), 133.

¹¹¹ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 39.

¹¹² See generally The World Bank, *Human Rights and Development: The Role of the World Bank* (Washington, DC: the World Bank, 1998).

¹¹³ *Ibid.*, 2.

¹¹⁴ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 40.

¹¹⁵ Sanae Fujita, "The Challenges of Mainstreaming Human Rights in the World Bank", *The International Journal of Human Rights*, 377.

Mr Alfredo Sfeir-Younis. In his term in office from 1999 to 2003 as Director General and as Special Representative to the UN, he consistently attended the meetings of Commission and SubCommission on Human Rights and from time to time issue statements regarding human rights concerns.¹¹⁶

In 2000 the President of the Bank Wolfehanson accepted the importance of human rights and particularly environmental issues. In his statement to the Development Committee he reiterated that;

There is, moreover, widespread recognition of the strong link between human rights and development . . . The Bank's work substantially contributes to the realization of rights of people in a number of areas, such as health, education, gender, participation, accountability, environment, institutional reform activities and, above all, the fight against poverty itself as a fundamental denial of human rights . . . The Bank is currently reviewing its role with a view to making a more explicit link between human rights and our work, while at the same time remaining fully in compliance with our Articles of Agreement.¹¹⁷

Similarly, the Bank also takes interest in attending the meetings of human rights academics. In 2004 the Bank attended the meeting held at the New York University and participated in its further discussions in which the Bank role in human rights concerns was highlighted.¹¹⁸ In 2004, the Bank Representative to the UN remarked to the Working Group on Right to Development that;

It is an added pleasure to be part of such a distinguished panel, at least one member of which I recognize from those days when the bank would have shuddered at the prospect of having to speak publicly about human rights, let alone describe how it is currently striving to position human rights as a

¹¹⁶ For more detail see Committee on Economic, Social and Cultural Rights, Report on *the Twenty-fifth, Twenty-sixth and Twenty-seventh Session*, UN Doc. E/2002/22, Chapter V.

Available on: www.refworld.org/pdfid/45c30b330.pdf

¹¹⁷ Available on: <http://web.worldbank.org> (last accessed 25/12/2014).

¹¹⁸ P. Alston and M. Robinson, eds, *Human Rights and Development* (Oxford: Oxford University Press, 2005).

significant consideration in its formulation of development assistance strategies and programs.¹¹⁹

It can be said that the attitude of the Bank towards human rights concern in its financial activities has changed considerably over the years; however, there is still a lot to be done in this regard.

1.6.2 The Fund and the Human Rights

The attitude of the Fund towards human rights concern is somehow conservative as compared to that of the Bank; it considered these concerns as outside the scope of its Articles of Agreement. The Fund maintained that it is responsibility of the respective government to fulfill its human rights obligations.¹²⁰ The Fund do recognizes the possible social impacts of its structural adjustment lending but it put the responsibility of these on the individual government.¹²¹

The influence of the Fund over human rights may be limited as compared to the Bank for so many reasons. First, the Fund's operations are mostly on macroeconomic level, particularly monetary issues. The Bank on the other hand focus on micro-economic level of economy that more likely effect the human rights in the Member States.¹²² Second, the Fund lending facilities tends to cover a short period of time than the

¹¹⁹ J. Ingram, 'Speech to the High Level Seminar on the Rights to Development, the fifth session of the UN Working Group on the RTD' as quoted by Sanae Fujita, "The Challenges of Mainstreaming Human Rights in the World Bank", *The International Journal of Human Rights*, 377.

¹²⁰ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 41.

¹²¹ Ibid.

¹²² Daniel D. Bradlow, "The World Bank, the IMF, and Human Rights", *Transnational Law & Contemporary Problems*, 72.

Bank, and also the human rights changes requires longer period. It provides an opportunity to the Fund to ignore human rights issues in its operations.¹²³

As the Fund was initially intended for short-term stabilization programs over the time it stepped into long term development arrangements.¹²⁴ This resulted in a convergence of activities between the Fund and the Bank, and a more prominent involvement in human rights. As a result the Fund took keen interest alongside the Bank in the implementation of the Heavily Indebted Poor Countries Initiative (HIPC) since 1999 that aims at poverty alleviation.¹²⁵ It also supported the fulfillment of Millennium development Goals (MDGs). This is further augmented by the statement of its former General Council when he approves the position of the United Nation High Commissioner of Human Rights (UNHCHR) that: 'This conception of the alleviation of poverty has especially strong human right dimension'.¹²⁶

As an international organization the Fund cannot ignore the human rights implications of its operations when it became as serious as to causes monetary consequences. It is the responsibility of the Fund to support to protect the citizens in the Member State from human rights abuses. The Fund as well as the Bank came under severe criticisms in the 1960 and 1970s when both supported the apartheid regimes in South Africa and Portugal. Consequently, it compelled the fund to abandon its financial

¹²³ Ibid.

¹²⁴ B. Rajgopal, "Crossing the Rubicon: Synthesizing the Soft International Law of the IMF and Human Rights", *Boston University International Law Journal*, 11:1(1993), 92.

¹²⁵ Margot E. Salomon, "International Economic Governance and Human Rights Accountability" available at: <http://ssrn.com/abstract=1013505>.

¹²⁶ Ibid, 5.

support to these regimes as the abuses caused severe human rights violations and enable the State to fulfill the obligation as a member of the Fund.¹²⁷

However, the Fund still can, through Article IV consultation with the Member State and by attaching conditionalities to its financial facilities, play a significance role for the of human rights issues in these states. Hence, it needs a proper human right policy that could remove doubts from the minds of all the stakeholders regarding its operations.

Conclusion

To sum up, although the initial purpose of the two institution was different but with change in international community, the paradigm shift in global economy and the evolving role of human rights law merit further investigation of the issue. The two institutions play very important role in present day world affairs and their influence on the states also prove the fact that it is time to the link their activities to human rights. With the evolution of human rights law to include obligation holder other than state it is justified to analyze the role of these two institutions. It is supported by the fact that these institutions have also accepted rather tentatively the importance of human rights in their activities it is important to evaluate the legal basis for such intention shown by these two institutions.

¹²⁷ For thorough discussion see Daniel D. Bradlow, "Debt, Development and Democracy: Lessons from South Africa", *Michigan Journal of International Law*, 12:647 (1991).

CHAPTER 2

LENDING POLICIES OF THE TWO INSTITUTIONS AND STRUCTURAL ADJUSTMENT LOANS (SAL)

Introduction

In this chapter the focus is on the lending policies of the two institutions. The chapter begins with definition of Structure Adjustment followed by the nature of the conditionalities that are generally attached with loans of the two institutions. The chapter proceeds further with legal discussion about the role of the state with respect to these conditionalities. The purpose of this chapter is to highlight the lending policies and the criticism leveled against these policies. It is followed by the responses of the two institutions to these criticisms. Moreover, we also discussed the global experience with these loans and how it affected different sectors within the states. We also take Pakistan as a case study to highlight the fall outs of these lendings.

2.1 Defining Structural Adjustment (SA)

Many authors have discussed structural adjustment (SA). It is the change in economic policies of a state in order to fill loopholes in economic structure. Some maintain that it is a 'conscious change' in the fundamental structure of economic relationship with

insociety.¹²⁸ Others advocate these changes are meant to 'ensure sustained growth'.¹²⁹ The aim of SA is to reshape the economies of Third World and to make them market-oriented.¹³⁰ As mentioned above that it is a conscious change which means that it is not an automatic change in policy dictated by market forces rather it is the manipulation of policy.¹³¹ In addition to it SA is implemented in order to make the market more adaptable and to enhance the flexibility of the economy.¹³² The Bank defines it simply as a government policy and institutional reforms.¹³³ However, for our discussion SA are special kind of programmes followed by the Bank and the Fund in their lending to the borrowing states.

Now what exactly 'structure' of a state in the context of economy means? According to Killick it is 'how a society employs resources, produces goods, and distributes goods and income'.¹³⁴ The structure of a state include 'political system, legal framework, enforcement agencies, established patterns of social organization, public administration, and even demographics of a country all form a country's institutional base combined with its productive system and physical infrastructure'.¹³⁵

2.2 Historical Overview of Structural Adjustment Programmes (SAPs)

As mentioned in the preceding chapter, the decade of 1970s had witnessed massive economic upheavals driven by two oil shocks of 1973 and 1978-79. As a result the Third

¹²⁸ David Reed, (ed), *Structural Adjustment and the Environment* (Boulder, CO: Westview Press, 1992).

¹²⁹ Mohan, Giles et al, *Structural Adjustment Theory, Practice and Impacts* (New York: Rutledge, 2000), 25.

¹³⁰ Ibid.

¹³¹ Tony Killick, *The Adaptive Economy, Adjustment Policies in Small, Low-Income Countries* (Washington, D.C.: World Bank, 1993), 68.

¹³² Ibid.

¹³³ www.worldbank.org/html/extdr/pb/pbadjustlending.htm (last accessed 20/03/2015).

¹³⁴ Tony Killick, *The Adaptive Economy, Adjustment Policies in Small, Low-Income Countries*, 68.

¹³⁵ Ibid, 5-6.

World countries faced a debt burden much more than they could afford and we also pointed to the fact that by then the strict difference between the Bank and the Fund became blurred as the Bank moved more towards the Fund's area of operation and vice versa.¹³⁶

The oil shocks resulted in sudden rise in oil price that changed the outlook of World economy. On the one hand it provided an opportunity to the oil exporting states to earn cheap petro-dollars (petroleum dollars) much to the despair of the west as a huge chunk of resources would flow into these oil rich countries, while on the other hand, it provided to other less developed countries, an opportunity of economic growth.¹³⁷ The Organization of Oil-Exporting Countries (OPEC) emerged as a leader of these oil producing states that has the support of all less developed states as well. These states were hoping that it would provide an opportunity to those states that are producing and exporting other products such as jute, copper, bauxite, tea etc. to have trade favours through collective actions and more importantly, the flow of enormous capital into OPEC would be a source of cheap loans to these less developed countries to overcome their economic problems.¹³⁸

However, much to the relief of the west the same didn't happen otherwise the outflow of enormous resources from the rich west would have solved the problems of both oil exporting countries as well as the starving less developed countries.¹³⁹ Furthermore, as most of the OPEC countries are small kingdoms and they are historically dependent upon

¹³⁶P. Mosely, J. Harrington and J. Taylor, *Aid and Power: The World Bank and Policy Based Lending*.

¹³⁷Biplab Dasgupta, "SAP: Issues and Conditionalities: A Global Review", *Economic and Political Weekly*, 32:20 (May 17, 1997), 1091-1104.

¹³⁸Ibid, 1093.

¹³⁹Ibid.

the military might of the west for their survival, hence, it was obvious that these petrodollars were destined to be reprocessed back to the west more particularly to the western banks.¹⁴⁰ In the meanwhile the oil consuming countries faced a severe balance of payment crisis thereby provided a playing field for the western banks.

With huge funds in hand the western banks dashed out these funds to the countries facing severe balance of payment crisis more particularly the African and Latin American countries. Resultantly, these countries borrowed enormously from these commercial banks that were competing with each other for place in the market and have less stringent conditions attached to their loans.¹⁴¹ Many of these countries borrowed much more than their economies could actually permit.

However, this situation didn't last long and these privately owned banks started revisit their lending policies and thereby calculating the risk they had taken. As a result they became very selective in their lendings and part ways with less developed countries.¹⁴² Moreover, the sudden fall in the demand for agriculture products resulted in severe economic crisis for mono-crop less developed states. It was the time when these states needed these banks desperately but by then they have adopted their traditional conservative approach as they wanted their money back with interest and stopped lending to less developed countries.¹⁴³ In the meantime the coming into power of monetarist regimes in the west resulted in increased interest rates, thus aggravated the situation as

¹⁴⁰P. Mosely, J. Harrington and J. Taylor, *Aid and Power: The World Bank and Policy Based Lending*, 6-7.

¹⁴¹Biplab Dasgupta, "SAP: Issues and Conditionalities: A Global Review", *Economic and Political Weekly*, 1093.

¹⁴²Graham Bird, "IMF Lending: The Analytical Issues". Overseas Development Institute Working Paper No. 64 (London, 1992).

¹⁴³ *Ibid.*, 7.

the state to state assistance was also curtailed dramatically that added extra burden on less developed countries.¹⁴⁴

The time was ripe for the introduction of the Structural Adjustment Programmes (SAPs) because the developing countries were faced with deeply rooted financial problems that led the IFIs to realize that the problem lies in the national policy-making and the structural deficiencies in the economies of these countries. As the World Bank Study puts it 'SA aims at setting the economy of a country back on a path of sustainable growth when it is faced with a macro-economic crisis characterized by unsustainable internal and external balances'.¹⁴⁵ It also defines SA as a 'process whereby the national economy is opened by means of the depreciation of real exchange rate. This is accomplished through a combination of demand-side and supply-side policies, with or without a nominal devaluation'.¹⁴⁶

The Bank started with Structural Adjustment Lending (SAL) in 1980s. Through this arrangement the Bank deviated from traditional way of operation, which had been to finance specific projects.¹⁴⁷ Throughout 1980s the Bank operated through SALs. This was followed by Sectoral Adjustment Loans (SECAL) but SALs were not abandoned. The aim of these loans was to solve the balance of payments problems, and the conditions were attached to insure medium-term growth.¹⁴⁸

¹⁴⁴ It was the coming into power of Margaret Thatcher in UK and Ronald Reagan in the USA.

¹⁴⁵ L. Deremy et al, *Understanding the Social Effect of Policy Reform*, World Bank Study (Washington DC: World Bank, 1993).

¹⁴⁶ Ibid.

¹⁴⁷ World Bank Articles of agreement, Art III, s4(vii).

¹⁴⁸ Jane Harrigan, "Modelling the impact of World Bank policy-based lending: The case of Malawi's Agricultural Sector", *The Journal of Development Studies*, 33:6, (August, 1997), 848-873.

the state to state assistance was also curtailed dramatically that added extra burden on less developed countries.¹⁴⁴

The time was ripe for the introduction of the Structural Adjustment Programmes (SAPs) because the developing countries were faced with deeply rooted financial problems that led the IFIs to realize that the problem lies in the national policy-making and the structural deficiencies in the economies of these countries. As the World Bank Study puts it 'SA aims at setting the economy of a country back on a path of sustainable growth when it is faced with a macro-economic crisis characterized by unsustainable internal and external balances'.¹⁴⁵ It also defines SA as a 'process whereby the national economy is opened by means of the depreciation of real exchange rate. This is accomplished through a combination of demand-side and supply-side policies, with or without a nominal devaluation'.¹⁴⁶

The Bank started with Structural Adjustment Lending (SAL) in 1980s. Through this arrangement the Bank deviated from traditional way of operation, which had been to finance specific projects.¹⁴⁷ Throughout 1980s the Bank operated through SALs. This was followed by Sectoral Adjustment Loans (SECAL) but SALs were not abandoned. The aim of these loans was to solve the balance of payments problems, and the conditions were attached to insure medium-term growth.¹⁴⁸

¹⁴⁴ It was the coming into power of Margaret Thatcher in UK and Ronald Reagan in the USA.

¹⁴⁵ L. Deremy et al, *Understanding the Social Effect of Policy Reform*, World Bank Study (Washington DC: World Bank, 1993).

¹⁴⁶ *Ibid.*

¹⁴⁷ World Bank Articles of agreement, Art III, s4(vii).

¹⁴⁸ Jane Harrigan, "Modelling the impact of World Bank policy-based lending: The case of Malawi's Agricultural Sector", *The Journal of Development Studies*, 33:6, (August, 1997), 848-873.

In the meantime the Fund also introduced SAP lendings. These loans were enacted through two facilities namely Structural Adjustment Facility (SAF) in 1986 followed by Enhanced Structural Adjustment Facility (ESAF) in 1987.¹⁴⁹ In 1999 the Fund replaced ESAF with new Poverty Reduction and Growth Facility (PRGF) with objective to help the low-income member to reduce their poverty through feasible economic strategies.¹⁵⁰ According to the Fund this facility aims at:

‘...sustained, pro-poor economic growth based on robust private sector activity and involvement [which] will be the keystone of the poverty reduction strategy. The Fund will continue to advise on and support policies to this end, including prudent macro-economic management, freer and more open markets and a stable and predictable environment for private sector activity.’¹⁵¹

According to the Fund this facility is different from previous facilities in two aspects; first this facility is mainly based on the Poverty Reduction Strategy Paper (PRSP) prepared by the national government and secondly there is more public participation as the contents of this strategy is open to public debate.¹⁵²

2.3 Conditions of SAP

The conditions attached to every SAP arrangement are different. It depends upon the amount of loan taken, the economic conditions prevalent in the recipient state, the reason for which the loan is sought and the political structure of the state. The larger the amount of loan the greater is the number of the conditions together with tightening of monitoring. For example the conditions attached to the loans given to Sub-Saharan African states are

¹⁴⁹Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 20.

¹⁵⁰ IMF, *The Poverty Reduction and Growth Facility (PRGF) - Operational Issues*, available at: www.imf.org (last accessed 15/4/2015).

¹⁵¹ *Ibid*, para 7.

¹⁵² *Ibid*, para 1.

almost impossible to be attached in the case of states with stronger economies.¹⁵³ No two SAPs are exactly identical, however, generally the conditions include:

1. **Trade Liberalization** aims at promotion of competition and free trade. Through this barriers such as tariffs on import and control on consumer goods are removed to enhance trade and foreign investment. In other words the state has to take a back seat and let the market forces decide economic matters.
2. **Devaluation of Currency** for the increase in export and to attract more foreign investment. It has become a compulsory requirement for taking loans from the Fund since 1983.¹⁵⁴
3. **Abolishment of Subsidies** in order to reduce government spending in areas like agriculture and energy.
4. **Reduced Public Spending** to reduce pressure on government exchequer through privatization of public enterprises. It follows that public enterprises should be privatized except those of strategic importance such as defense and research establishments. This would improve their efficiency and bring much needed funds for reducing fiscal deficit.

Moreover, the SAPs also emphasize on taking strict monetary measures thereby increased interest rates, reduced access to credit, and endeavor to enlarge export base in sectors like manufacturing and agriculture products in order to increased foreign exchange to pay creditors.¹⁵⁵

¹⁵³Tony Killick, *The Adaptive Economy, Adjustment Policies in Small, Low-Income Countries*, 109.

¹⁵⁴ Graham Bird, *IMF Lending: The Empirical Evidence*, Overseas Development Institute Working 70, (London, 1993).

¹⁵⁵FantuCheru, "Structural Adjustment, Primary Resource Trade and Sustainable Development in Sub-Saharan Africa", *World Development*, 20:4 (1992), 497-512.

2.4 Role of the State in SAPs

On the face of SAPs it can be observed that state has been given a very little role. But by deep inspection it is not the case. The main task under this new regime for state is to promote 'human capital formation', to enhance literacy with special emphasis on technical education, access to safe drinking water, and health facilities to all.¹⁵⁶ The state is allowed to play its traditional role of security and to maintain law and order situation while on the other the state is expected to provide a favourable environment for production under private ownership.¹⁵⁷

Further, financial reforms are the *sine qua non* of these packages. The state generally provides credit to certain vulnerable groups like poor through subsidization of interest rates. The interest rates are determined by market forces and therefore, it is expected to be flexible, the main objective of which is to keep the interest rate ahead of inflation and to encourage savings.¹⁵⁸

Moreover, the SAPs also considers fiscal reforms as essential part of overall package. It means that the tax structure should be transparent and all inclusive with high level of compliance. Tax system should not be cumbersome and the tax rates should be just in order to get maximum compliance followed by stricter enforcement mechanism. This system would discourage the growth of 'black money' and would also expect to raise revenue collection.¹⁵⁹

¹⁵⁶ Biplab Dasgupta, "SAP: Issues and Conditionalities: A Global Review", 1097.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid, 1098.

¹⁵⁹ Ibid.

The proponents of SAPs do not reject the negative impacts of these programmes. In initial stages they may take a heavy toll on the economies of recipient states resulted in unemployment, poverty and inequality but with passage of time these problems will take care of themselves. They considered these as a 'price for past follies and for future prosperity'.¹⁶⁰

2.5 Criticism of SAPs

Many scholars have questioned the rationale of the conditionalities attached to the loans of these two institutions. The early SAPs were criticized by both outside commentators and some officials within the institutions. Many commentators maintain that for a disciplined economy and for sustainable growth some sort of structural adjustment is necessary, some criticize the essence of the conditions attached while others objected the particular conditions attached to these loans.¹⁶¹

SAPs have been criticized from different aspects, however, the common criticism revolve around these points. First, SAPs are considered as short-term solutions to long-term problems. As Killick puts it "a long-standing constraint about IMF's policies toward developing countries is that its programs are too short-term to be able to cope with the often deep-seated nature of the countries' payment weaknesses".¹⁶² The Bank and the Fund both are faced with this difficult challenge to address the issue of immediate debt and stability problems on the one hand and long-term stable development on the other hand.

¹⁶⁰ Ibid.

¹⁶¹ A. Adepoju (ed), *The Impact of Structural Adjustment on the Population of Africa. The Implications for Education Health and Employment*, (Portsmouth: Heinemann, 1999), 3.

¹⁶² Tony Killick, *The Adaptive Economy, Adjustment Policies in Small, Low-Income Countries*, 70.

Secondly, SAPs are criticised for overlooking the external factors that could affect the economy of the borrowing state and these are generally beyond the control of that state. For example the fluctuating global market prices for goods. Thirdly, critics say that SAPs fail to reduce poverty as they tend reduce opportunities for wealth generation.

Finally, scholars like Reed maintain that SAPs are generally imposed upon governments and there is lack of ownership of the government. This generally creates a feeling of alienation among the government official that tend to weaken their commitment for the success of these programmes.¹⁶³

Moreover, some argue that commitment to these arrangements is virtually a compromise on the sovereignty of the country. As Bello puts it “since SA measures covered so many dimensions of macroeconomic policy, agreeing to a SAL was virtually turning over control of a country’s economy to the World Bank”.¹⁶⁴ Similarly, Rich contends that the recipient states renounce some parts of their national sovereignty by agreeing to “revamp their economies into foreign exchange-earning, export-oriented machines, often to the detriment of long-term domestic social and environmental needs”.¹⁶⁵

Further, the SAPs are criticized for their poor success rate,¹⁶⁶ their over emphasis on marketisation policies and unnecessary rigidity. The impacts of SAPs are more severe

¹⁶³ David Reed, (ed), *Structural Adjustment and the Environment*, 32.

¹⁶⁴ Walden Bello, Shea Cunningham, and Bill Rau, *Dark Victory: The United States, Structural Adjustment and Global Poverty* (London: Pluto Press, 1994), 27-28.

¹⁶⁵ Bruce Rich, *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development* (Boston: Beacon Press, 1994), 110.

¹⁶⁶ A. Adepoju (ed), *The Impact of Structural Adjustment on the Population of Africa. The Implications for Education Health and Employment*, 3.

in the African states as in 1989 the United Nation Economic Commission for Africa (UNECA) in its report criticized the SAPs in Africa and provided an African alternative to SAPs. It stated that:

The overall assessment of orthodox adjustment programmes has led to the conclusion that, although these programmes aim at restoring growth, generally through the achievement of fiscal and external balances and the free play of market forces, these objectives cannot be achieved without addressing the fundamental structural bottlenecks of African economies.¹⁶⁷

2.6 Response of the Two Institutions

In response to these criticisms the Bank gives more attention to them as compared to the Fund. The Fund generally gives a cold shoulder to these issues and considered it the responsibility of the recipient government.

The first real effort was made by the UNICEF in its study "Adjustment with a Human Face" to highlight the social impacts of the lendings of these institutions and made them revisit their adjustment programmes.¹⁶⁸ As a result these institutions started complementary policies in order to minimize the collateral damage of their policies.¹⁶⁹

Initially the Fund ignored these issues but with growing criticism it started to pay attention to the social impacts of its adjustment and more particularly those related to poor and other vulnerable groups of the society.¹⁷⁰ In 1989 the Fund in its annual report elaborated this issue and recognized the social and economic impacts of adjustments on poor and to develop policies that could nullify these effects.¹⁷¹ However, on the ground

¹⁶⁷ United Nation Economic Commission for Africa, 1989, 3.

¹⁶⁸ David Reed, (ed), *Structural Adjustment and the Environment*, 37.

¹⁶⁹ Mohan Munasinghe, "Introduction to Special Topic I: Structural Adjustment Programs and the Environment", *Environment and Development Economics*, 4:1 (February 1999), 9-18.

¹⁷⁰ FL. Osunsade and P. Gleason, *IMF Assistance to Sub-Saharan Africa* (Washington DC: IMF, 1992).

¹⁷¹ IMF, Annual Report, 1989, 35.

the Fund made some tentative efforts in the shape of introduction of some 'social safety nets' in 1992, provided mainly to the Eastern Europe and the USSR. These were explained by the Fund in these words:

Some policies, such as major adjustments in relative prices, or in the overall size of the public sector to achieve a sustainable budgetary position, may have a negative impact on some poor or vulnerable groups in short run. Particularly mitigating measures may be needed to protect such groups from a decline in their living standards below an acceptable minimum.¹⁷²

Although the Fund's overall response has been timid, but towards the end of the century and into the new century its attitude towards poverty and poverty reduction witnessed mark improvement. It is evident from the new PRGF that states that 'the new approach recognizes the increasing evidence that entrenched poverty and severe inequality in the economic opportunities and asset endowments can themselves be impediments to growth.'¹⁷³ Similarly, in 2002 the Fund retained the social safety nets and enhanced public spending in sectors like education and health in order to mitigate the negative social impacts of its adjustments and these efforts were further augmented by boost in income-generation through small scale enterprises.¹⁷⁴

However, it is uncertain whether these measures have improved the social conditions of the poor segment of the society or not and there are even counter narratives authors like Rich maintain that these measures have further aggravated the situation by adding to the country's debt burden¹⁷⁵. He further says that these loans were

¹⁷²Ibid, 64.

¹⁷³IMF, PRGF 2000, 4.

¹⁷⁴David Reed, (ed), *Structural Adjustment and the Environment*, 38.

¹⁷⁵Bruce Rich, *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development* (Boston: Beacon Press, 1994), 189.

used for political purposes by giving it a human face rather than making any positive impact.¹⁷⁶

The Bank has also gradually realized that reduction of debt cannot be achieved only through economic growth but it needs a holistic approach of long-term development and sustainability. As a result the Bank over the years has changed the standards on the basis of which economic development was measured. It is evident from the Bank's development reports which it published from time to time. In 1995 World Development Report (WDR) the main criterion for economic development is GNP per capita that was replaced by themes like people, the environment, and the economy in WDR 1996. Further, the WDR of 2000/2001 enlarges the criterion and included many other indicators such as environmental sustainability, human capital development, private sector development, macroeconomic performance, and global links.¹⁷⁷ The change is evidence of the fact that the Bank has ignored its traditional approach to economic development.

Furthermore, in response to growing criticism from different organizations and particularly the Jubilee 2000 movement prompted both the Fund and the Bank to initiate jointly High Indebted Poor Countries (HIPC) Initiative. The aim was to enable HIPC to achieve debt sustainability over the medium term.¹⁷⁸ The eligible country was provided with exceptional assistance on the basis of good track record with Fund-Bank supported adjustment programmes.¹⁷⁹

¹⁷⁶ Ibid.

¹⁷⁷ All these reports are available on: www.worldbank.org. (last accessed 20/5/2015)

¹⁷⁸ www.imf.org/external/np/exr/facts/esaf.htm (last accessed 20/5/2015).

¹⁷⁹ Ibid.

2.7 Global Experience with SAPs

The broad generalization of the global experience with SAPs provides a very murky picture. For most countries the stabilization programmes resulted in a downward slide in saving and investment ratios associated with decline in GDP growth rate even if the governments were able to manage trade deficit and controlled inflation.¹⁸⁰ It is because the prescription provided by these programmes to reduce public investment in order to reduce fiscal deficit discourages private investment as the government is unwilling to share risks with private investment. However, there is only one exception i-e Chile where the private investment came to the rescue of public investment.¹⁸¹

In the same vein when government is compelled to reduce its spending, the first target is generally cut in capital expenditure such as irrigation, power and rural infrastructure which ultimately reduce production.¹⁸² Education and health are also affected by curtailment in social expenditure.¹⁸³ The global experience is evident of the fact that when fiscal adjustment disproportionately affected capital expenditure it generally results in decline in exports that leads to exchange rate appreciation in some cases.¹⁸⁴

The main thrust of stabilization programme is on reduction in government expenditure for reducing fiscal deficit, without taking into consideration other options for

¹⁸⁰Vittorio Corbo and Stanley Fischer, *Adjustment Programmes and Bank Support-Rationale and Main Results* (World Bank, 1992), 7-20.

¹⁸¹Biplab Dasgupta, "SAP: Issues and Conditionalities: A Global Review", 1098.

¹⁸²Tony Killick, "Continuity and Change in IMF Programme Design 1986-92", *Overseas Development Institute Working Paper No 69* London, (1992), 19-20.

¹⁸³P. Mosely, J. Harrington and J. Taylor, *Aid and Power: The World Bank and Policy Based Lending*, 101-2

¹⁸⁴Faezeh Foroutan, "Trade Reform in Ten Sub-Saharan African Countries: Achievements and Failures", Policy Research Working Paper 1222, *World Bank, Policy Research Department*, (1993), 29.

meeting the same requirement such as to expand revenue by taxing those who could pay particularly the rural rich and new traders and industrialists.¹⁸⁵ These programmes emphasize on reduction in tariff and there is hardly any tendency for reforms in tax structure.¹⁸⁶ Resultantly, this lead to reduction in aggregate saving in a country as the inclination towards saving is more prominent in case of private sector as compared to public sector.

However, in case of East Asian countries the efforts to raise tax revenue to finance public investment resulted in more aggregate saving and investment in the country.¹⁸⁷ Similarly, the government can also afford to maintain high budget deficit without drop in current account provided the private sector is willing to generate additional net saving surpluses at reasonable rates as was witnessed in the case of Thailand and Malaysia.¹⁸⁸

The statistics also show the same pattern. In an econometric study by El Farhan, he collected data from 32 countries of Sub-Saharan Africa and come out with a result that there is a positive correlation between GDP growth and export earnings and a negative one with debt service ratio.¹⁸⁹ Another study focusing the sub-Saharan countries found that those countries participating in ESAF programmes experienced a low economic growth as compared to those not participating and their debt burden has increased although the Fund-mandated macroeconomic policies and HIPC Initiative were in

¹⁸⁵ Biplab Dasgupta, "SAP: Issues and Conditionalities: A Global Review". 1098.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid, 1098-99.

¹⁸⁹ Tony Killick, "Explaining Africa's Post-Independence Development Experiences", *Overseas Development Institute Working Paper No 60*, London (1992). 12-14.

place.¹⁹⁰ Similarly, another study demonstrates that 17 out of 23 African countries that followed adjustment policies witnessed decline in their per capita income while 11 out of 13 Latin American countries had also the same pattern during 1980s.¹⁹¹

Although in some cases the stabilization programmes may have some success but it is unclear whether it was because of the policy advice or the finance it accompanied. The best example in hand is the sub-Saharan countries; although they were truthful followers of the policy prescriptions of these institutions yet they are facing deflation induce by these packages.¹⁹² On the other side frequent devaluation of their currencies has not been able to boost up export in spite of balance in their external accounts and in several cases the competition in devaluation has resulted in a disaster for countries exporting the same products as the prices decline sharply.¹⁹³

Agriculture sector was considered to be the main beneficiary of structural adjustment as it was freed from control of the protectors of urban-industrial interests under these adjustments. It was the area in which less develop countries had comparative advantage and dismantling the control of state on agriculture sector it was expected that it would push the economies of less developed countries into new heights.¹⁹⁴

However, the results were not satisfactory as there were loopholes in the overall trade policy aggravated by unstable prices of the agricultural products. On the one hand

¹⁹⁰Robert Naiman, and Neil Watkins, *A Survey of the Impacts of IMF Structural Adjustment in Africa: Growth, Social Spending, and Debt Relief* (Center for Economic and Policy Research, 1999), 2-3.

¹⁹¹Vittorio Corbo and Stanley Fischer, *Adjustment Programmes and Bank Support-Rationale and Main Results*, 67.

¹⁹²Biplab Dasgupta, "SAP: Issues and Conditionalities: A Global Review", 1099.

¹⁹³ Ibid.

¹⁹⁴ Thomas et al (eds), *Restructuring Economies in Distress Policy Reform and the World Bank* (World Bank: Oxford University Press, 1991), 131-58.

the farmers were benefiting from absence of price control or because of higher government support prices while on the other hand they had to bore the brunt of higher input prices because of the curtailment or absence of subsidies on them.¹⁹⁵ Moreover, in order to control fiscal deficit cuts in public expenditure on irrigation, power, infrastructure, health and education affected the rural producers adversely. Further, the area which was of great importance for these policy prescriptions to succeed was land reforms but it was ignored altogether and in fact in Chile, Peru and Ethiopia land reforms were reverse under structural adjustment.¹⁹⁶

In industrial sector the Fund-Bank policy prescriptions called for non-intervention of state. They prohibit state from control and subsidies and on the contrary advice state to support private agents and stay away from economic affairs. The conditionalities provide for the governments to done away with protectionist policies and a strongly opposed the national reliance on import substitution. There is no data available that can reflect industrial development under structural adjustment. Although, there are instances of less develop countries such as East Asian countries that were able to sustained higher industrial growth without the presence of either the Fund or the Bank. In many areas they were in variance with these institutions but they managed to maintain a higher industrial growth.¹⁹⁷

However, countries like Thailand, Malaysia and Indonesia performed better under these adjustment programmes. But the picture become bleak in case of Philippines as it

¹⁹⁵Paul Mosely, J. Harington and J. Taylor, *Aid and Power: The World Bank and Policy Based Lending 190-97*.

¹⁹⁶Thomas *et al* (eds), *Restructuring Economies in Distress Policy Reform and the World*, 131-58.

¹⁹⁷BiplabDasgupta, "SAP: Issues and Conditionalities: A Global Review", 1100.

was the most advanced country of the four and it also received more funds than the other three. The situation in Philippines certainly creates doubts of the success in the industrial sector of other countries under the adjustment programmes and the critics maintain that there are other reasons for the industrial growth in the former three countries.¹⁹⁸

The proponents of SAPs advocate reforms in labour market but due to strong local opposition the two institutions kept themselves aloof from politically sensitive matters.¹⁹⁹ However, in Ghana many ghost workers were removed from employment that resulted in great amount of national saving.²⁰⁰ The general tendency of these SAPs is a freeze in public employment and due to low level of private investment growth in private sector employment is also rare. The proponents maintain that for the country to prosper it has to sacrifice and they consider these conditions as a price for the past follies. They even want the social safety nets to be privatized but the opponents view this as a high risk for the protection of pensioners and other beneficiaries.²⁰¹

Reforms and Privatization of public sector enterprises are among the foremost policy prescriptions of these SAPs. The main emphasis of structural adjustment is on non-intervention of the state apparatus in the economic affairs. Hence, the issue of public enterprises is handled by two ways. First, through privatization of public units in order to

¹⁹⁸ Ibid.

¹⁹⁹ Vittorio Corbo and Stanley Fischer, *Adjustment Programmes and Bank Support-Rationale and Main Results*, 11.

²⁰⁰ Paul Mosely, J. Harrington and J. Taylor, *Aid and Power: The World Bank and Policy Based Lending*, 175.

²⁰¹ World Bank Development Committee, 47th Meeting, September 1993, Washington DC, 69-74.

make them more efficient, and, second to make the remaining more efficient and less burdensome for the government.²⁰²

Therefore, those public units that were performing well had good demand in the market while those units that were not performing well and it was expected to do well under private ownership, generally it was difficult to find buyer. On the other hand closing down those enterprises would result in more unemployment. Moreover, in countries like Chile and Mexico the privatization process was marred by high level corruption and most of the public units were sold much below their potential prices.²⁰³

However, efficiency of an enterprise does not depend upon whether it is publicly or privately owned but how it is managed. It is mainly the function of market system to determine the allocative efficiency not the ownership. One World Bank document suggests that privatization is not always a solution as in China and Korea private sector grew without privatization and the perception regarding privatization is changing as in the case of East Asian countries.²⁰⁴

2.8 Pakistan- a Case Study

The economy of Pakistan is mainly agrarian with fragile industrial base and weak infrastructure.²⁰⁵ The areas that comprise the present day Pakistan were the most undeveloped areas of British Empire.²⁰⁶ In 1947 the per capita income of Pakistan was

²⁰² Biplab Dasgupta, "SAP: Issues and Conditionalities: A Global Review", 1101.

²⁰³ John Nash, "Mexico: Adjustment and Stabilisation", in Thomas et al (eds), Chapter 22, 494-514.

²⁰⁴ World Bank Development Committee, 46th Meeting, May 1993, Washington DC, 69-70.

²⁰⁵ Shahid Javed Burki, *Pakistan, Fifty Years of Nationhood* (Lahore: Vanguard Publishers, 1999), 95.

²⁰⁶ Zohra Yusuf, *Pakistan's Economy in Eighties. Structure and Prospects* (Lahore: Feroz Sons Publishers, 1988), 311.

\$100.²⁰⁷ At the time of its creation it was essential for the existence of the nascent state to have a viable economy.²⁰⁸ According to Gunnar Myrdal 'few modern states started their independent existence on such a tenuous basis and under such severe initial difficulties as Pakistan'.²⁰⁹ Although the country was initially faced with economic turmoil but it did survive economically.²¹⁰

Howsoever, the country was faced with many difficulties in the initial period and subsequent separation of its eastern wing in 1971, the economy showed a moderate growth.²¹¹ In first four decades the average economic growth rate was 5 per cent but in 1990s due to political instability the economic performance was almost none.²¹² The situation was aggravated by sanctions due to 1998 nuclear test followed by the military takeover in 1999. After the military takeover the government initiated the policy of economic recovery. After the event of 9/11 Pakistan became the US ally in war against terrorism that provided an opportunity to the government that to approach IFIs through US support. The government initiated macroeconomic reforms that accelerated the economic growth from average 3.3 percent in 1997-2002 to 4.6 percent in 2003-2004 and 8.6 percent in 2004-2005.²¹³

²⁰⁷ Ibid.

²⁰⁸ B.M Bhatia, *Pakistan's Economic Development* (New Delhi: Vikas Publishing, 1979).

²⁰⁹ Gunnar Myrdal, *Asian Drama* (London: Middlesex publishers, 1968), 305.

²¹⁰ Shahid Javed Burki, *Pakistan, Fifty Years of Nationhood*, 96.

²¹¹ William Easterly, "The Political Economy of Growth Without Development: A Case Study of Pakistan" *Kennedy School of Government*, Harvard University, 2001.

²¹² In this period four elected governments were removed.

²¹³ World Bank, Country Assistance strategy for Pakistan for the Period FY06-09, *Report No 35718PAK*, Washington D.C, 2006.

Pakistan joined the Bank in 1950.²¹⁴ Since then Pakistan is a regular recipient of the Bank's loans and credits facilities. Pakistan is among top ten borrower countries of the Bank. The relation between the two is characterized by geopolitics. Because of its geographical location Pakistan always remains focal point of US foreign policy in the region. The IFIs are the tools used by the US in support of its aims and political objectives.²¹⁵ Its proximity with important geopolitical blocks like Middle East, South Asia and East Asia and neighborhood with countries like China and India and a transit way to the oil rich Gulf region. Hence, geopolitics and political considerations always play significant role in foreign aids to Pakistan. The geopolitical factor has been aptly described by Easterly in his book as:

'The American government enthusiastically backs the Pakistani government again today as a reward for the alliance in the war on terror , showering it with the world Bank and IMF loans and US foreign aid in 2002: some \$2.1 billion. The Americans tactfully overlook unpleasant things such as suppression of democracy, intelligence agencies linked to terrorists and nuclear proliferation.'²¹⁶

For a convenient study of the Bank's lending to Pakistan and its impacts on human rights may be divided into four periods:

2.8.1 First Period (1947-1977)

After independence Pakistan chose US as a friend and consequently become US's strategic partner for the containment of communism much to the dismay of Soviet Union.²¹⁷ This provided Pakistan the opportunity to receive loans from the Bank and

²¹⁴ Ibid.

²¹⁵ Catherine Gwin, *US Relations with the World Bank*, (Washington D.C: The Brookings Institution, 1994), 1.

²¹⁶ William Easterly, *The White Man's Burden, Why the West's Efforts to Aid the Rest have done so much Ill and so Little Good* (New York: The Penguin Press, 2006), 301.

²¹⁷ The visit of Liaqat Ali Khan to US and subsequent membership of the SEATO and CENTO. Moreover, the liking of Ayub Khan to the West and the US.

since 1952 the Bank is the largest provider of development assistant to Pakistan. This aid was used by Pakistan mainly for expanding the industrial base and to mitigate the problems of agriculture sector. In 1960s Pakistan became recipient of IDA's soft loans. During this period the idea of 'Functional Inequality' was developed by MehbubulHaq²¹⁸ that required the rich to earn more and more and then to use those savings for further production.

In that era the aid provided by the Bank accompanied by technical assistance resulted in rapid industrial and agriculture development. Both sector witnessed a growth rate in excess of 20 percent.

Although the aid provided by the Bank has played a significant role in the economic development of the nascent state but on the hind side the critics believe that the development in decades of 1950s and 1960s was controversial.²¹⁹ Moreover, a military dictator used the development mantra in order to usurp the civil and political rights of the people. The human rights are all interdependent and the state cannot deprive the people of other just for economic development.

Additionally, equity is a prerequisite for economic growth. This resulted in accumulation of wealth in fewer hands at the expense of majority of the people. It was due to this economic deprivation that the eastern wing separated from Pakistan. As B.M Bhatia puts it 'While in Europe capitalism acquired an imperialist character and overtones only after it reached the maturity stage, in Pakistan the nascent capitalist class

²¹⁸ He was a chief economist of Pakistan. He also recognized the method of measuring the development through HDI.

²¹⁹ S. Akbar Zaidi, *Fifty years of Pakistan's Economy* (Karachi: Oxford University Press, 1997), 234.

was helped to reap the advantages of possession of a colony from its very infancy.²²⁰ Moreover, it also created a new class of proletariat and main focus of development were a few individuals and their businesses.²²¹

2.8.2 Second Period

The second period may be characterized as an era of SAPs (Structural Adjustment Programmes). We have already discussed the impacts of SAPs on the economies of developing countries in the preceding pages. The case of Pakistan as compared to other developing countries was not different. It can be observed that the prescription provided by the SAPs is generally considered to be a fit for all solutions without taking into account the peculiar situation of the recipient state. These reforms are more suitable for those states that are faced with severe economic crisis like most of the Latin American states in 1980s but at that point of time the economic situation in Pakistan was comparatively stable.²²² Till 1980 the growth rate at average remains at 5 percent.²²³

Unfortunately there is very limited research available on the social impacts of SAPs and its role in poverty alleviation in Pakistan. But the little research available presents the pattern like other developing countries. However, there is one major difference in case of Pakistan that the decade of 1980s saw a military rule that had a far reaching impact on the socio-economic rights of the people. There was a persistent increase in the defense budget at the expense of social and economic development. The

²²⁰B.M Bhatia, *Pakistan's Economic Development, 1948-78. The Failure of a Strategy* (New Delhi: Vikas Publishing, 1979), 77.

²²¹Ibid, 97.

²²²S.AkbarZaidi, *Fifty years of Pakistan's Economy*, 97.

²²³Nancy Birdsall, Adeel Malik and Milan Vaishnav, "Poverty and the Social Sectors: The World Bank in Pakistan 1990-2003", *Center for Global Development*, 2005.

data available presents a constant 3.3 percent more defense budget as compared to other developing countries.²²⁴ Due to extravagant defense expenses there were obvious cuts in the areas of like education, health and social development that ultimately affected the poor and fixed income segments of the society.

As the conditionalities mainly emphasize on the imposition of General Sales tax that resulted in increase in inflation so the hammer generally fall on poor and low middle income class with fixed pay. Further, the cuts in government expenditure on health and education adversely affect the poor as they cannot afford them from their meager resources. Decrease in expenditure in education and health sector also resulted in gender imbalance. Furthermore, the decreases in labour force in formal and informal sector in order to lower production cost affect the lower strata of the society. In one research it is provided that in 1970s and 1980s there was decline in overall poverty in Pakistan but with the introduction of SAPs in late 80s and early 90s resulted in increase in poverty. The factors responsible were identified as low GDP, sectoral distribution, lower employment, and cuts in expenditures on social service.

2.8.3 Third Period

The decade of 1990s witnessed an unprecedented criticism against the Bank. As a consequence the Bank revisited its lending policies thereby adding terms like poverty alleviation and social development to its policies. In case of Pakistan it became evident in the shape of Social Action Plan (SAP). The Bank was also aware of the fact that in Pakistan the alleviation of poverty is not an easy task as the latter's perennial neglect of

²²⁴ Ibid.

the social development.²²⁵ There was prominent increase in spending on the social development from 8 percent in 1980s to 27.5 per cent in 1990s.²²⁶ The main areas of focus were primary education, family planning, health and sanitation. In addition to these the main focus of SAP²²⁷ was the delivery of social services to women.

The Plan was termed as 'pro poor' as well as aimed at 'empowerment' of the people and as a catalyst for 'reducing vulnerability'. This was the mode of operation of the Bank throughout the 1990s till the military takeover of 1999. However, the reduction in poverty and efficient delivery of social services remained a pipedream.

Critics argue that the Plan was devised in order to lessen the negative social impacts of the structural reforms of the eighties but in the process the Bank overlooked the peculiar situations regarding economic structure, infrastructure, and institutional setup prevalent at that time in Pakistan. So the failure was obvious and the Plan was unable to produce any social development. In the view of Hafiz Pasha that the social safety net may provide a safety valve to abject poverty but the real determinants are the macroeconomic indicators like per capita income and employment.²²⁸ Similarly, according to Burki the real reason for failure of the Plan was the lack of ownership by Government of Pakistan (GOP). According to him till 1990s there was complete harmony between the Bank and GOP and they played a complementary role to each other but since the beginning of 1990s the

²²⁵World Bank, *Country Assistance Strategy, 1992-95* (Washington D.C: World Bank, 1992).

²²⁶ *Ibid*, 67.

²²⁷ The SAP here should not be confused with Structural Adjustment Programme. It was a Plan specifically for Pakistan in 1990s by the Bank.

²²⁸Hafiz A. Pasha, *Macroeconomic Development and Poverty* (Karachi, Pakistan: Social Development Center, 2000).

Bank started to follow a development path without the connivance of the Pakistani policy makers.²²⁹

The exact and meaningful results of the SAP was summarised in the Country Assistance Evaluation of 2006 as: 'Beyond problems in the overall strategic thrust of the Bank's programmes, the bank failed to design a programme that was realistic. The SAP projects were the most extreme example of this failure.'²³⁰

2.8.4 Fourth Period

The decade of 1990s witnessed a dark period in the history of Pakistan economy. Although the initial period of new millennium did see an economic boom as Pakistan became a frontline state in the so-called 'War against Terror' that open up the flood gates for foreign aids and funds. The growth rate in 2004-5 touches almost 8.4 percent. However, this economic bonanza do not lost long and after the fall of military rule in 2008 the economic bubble created by the foreign assistance soon burst out. The present government is on the road of economic recovery and the GDP growth rate for 2014 was recorded as 4.14 per cent.²³¹

The present government is moving towards an economic consolidation but the results and indicators with respect to social development in Pakistan provide a murky picture when compared with states that have the similar income and growth rate.²³² The Report shows the Bank's impotency in alleviation of poverty and social development.

²²⁹ShahedJavedBurki, '*Pakistan Country Assistance Evaluation*' Draft Working papers prepared for the World Bank's Operations &Evaluation Department, 2002.

²³⁰World Bank, Country Assisntence Evaluation, 2006, *Report No34942*. Washigton D.C, 2006.

²³¹<http://www.tradingeconomics.com/pakistan/gdp-growth> (last accessed 24/12/2015).

²³² World Bank, *Pakistan - Country partnership strategy for the period FY2015-19* (Washington DC: World Bank Group, 2014). Available at: <http://documents.worldbank.org> (last accessed 24/12/2015).

Moreover, the Report pinpoints the Bank's neglect of the root causes of increase in poverty in Pakistan. For example the feudal structure in rural areas together with clergy and bureaucracy they resist any change in the existing power structure.²³³

Furthermore, the defense budget is ever on increase from year to year and there remain very little for social development. To sum up in the words of S Zaidi: 'with close to 6 per cent of GDP being spent on defense, little remains for development. In fact, Pakistan must be one of the very few countries where annual defense spending exceeds development expenditure.'

Conclusion

As we discussed in the preceding pages that in the beginning the two institutions did not realize the adverse impacts of their lending policies on human rights generally and socio-economic rights particularly in the recipient states. However, with growing criticism, increase in their areas of operations and paradigm shift in the world economy together with the changing status of international human rights compel both institutions to take these human rights concerns seriously. Hence, they responded by introducing policy changes in their operations but the overall situation remains unsatisfactory and there is need to search further that they are under legal obligation to pay attention to legitimate human rights concerns.

²³³Ibid, 201-15.

Chapter 3

LINKING INTERNATIONAL HUMAN RIGHTS LAW TO THE WORLD BANK AND THE IMF

Introduction

In this chapter the focus will be to link the two institutions with the international human rights law together with their human rights obligations. For this purpose the legal status of the two institutions in international law must be ascertain and it will be established that because of their ability to inter into relationship agreements with the state and also with other international organisations such as the UN both institutions possess international legal personality. Further, the reasons for their human rights obligations will also be center of discussion in this chapter. The last part of the chapter will mainly highlight the level of obligations for the two institutions. In order to clarify the situations two important socio-economic human rights i-e the right to education and the right to food will be taken as examples.

3.1 Link of the Fund and the Bank to Human Rights Law Generally

For this purpose we will discuss the Articles of Agreement of the two institutions and will also analysed the possible linkage between the Articles and the human rights

obligations. For start it is important to point out that nowhere in Articles of Agreement of either institutions the word 'human right' has been used. On the contrary the main focus of the Articles of Agreement is on the general policies and operations of the two institutions.

There are tentative reference in the Bank's Articles of Agreement to 'raising the conditions of labour'²³⁴ in Article I(iii) and similarly the Fund's Articles of Agreement also in Article I(iii) states 'maintenance of high levels of employment and income'. However, it is difficult to make any direct linkage for human rights concerns within the ambit of these institutions. The fact these issues are not discussed in the Articles of Agreement will dissolve these institutions from taking human rights concerns is misplaced and on the contrary as subjects of international law they are bound to observe human rights obligations in their operations.

The proponents of the Bank's contention that the Bank is prohibited from taking into consideration human rights concerns rely mainly on Article IV, s 10 of the Articles of Agreement which forbid the Bank and its staff from interference in the political affairs of any member state. On the other hand the Fund's Articles of Agreement are silent about this issue but the Fund maintains that to pay heed to human rights is against its purpose, and also contrary to the non-interference rule of international law as given in Article 2(7) of UN Charter.²³⁵

The crux of this discussion is that both institutions based their arguments on the belief that human rights is the domestic affair of the state and to pay attention to these concerns

²³⁴ The 'right to work' is given in many international and regional human rights conventions.

²³⁵ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 93.

will defeat their purposes and also the rules of international law. However the issue is not that simple to ignore and before we advance further it is pertinent to discuss what actually is 'domestic affairs'.

Now, both institutions are right to the extent that human rights belong to the domestic sphere of every state. The nature of the human rights law is peculiar as compared to most areas of international law in a sense that it is intended to regulate the relationship between the state and its 'subjects'. Secondly, the implementation of these rights is generally left to the discretion of the state provided that the minimum content of the right is respected.²³⁶ But the question arises whether human rights belong solely to the domestic sphere and will exclude any outsider or international player.

To clarify the situation reference could be made to the interpretation of non-intervention as given in Article 2(7) of the UN Charter. Let see how it is interpreted by different authors and international judicial bodies. Article 2(7) codifies the general principle of international law that there is complete sovereign equality of all member states of the UN and the principle of non-interference in domestic affairs by international entities.²³⁷ On the other hand SJ Watson maintains that Article 2(7) does prohibit international interference on human rights concerns in a particular state as he states that 'the power to make authoritative interpretation of Art 2(7) has not been yielded by States to the political organ of the United Nations'.²³⁸ Similarly he asserts that that the purposes

²³⁶ We find this doctrine in European Convention on Human Rights as 'margin of appreciation'.

²³⁷ JB, Hehir, "Intervention: from Theory to Cases". *Ethics and International Affairs* 9 (1995), 5.

²³⁸ JS, Watson, "Auto-Interpretation, Competence and the Continuing Validity of Art 2(7) of the United Nation Charter" *AJIL*, 71 (1977), 60.

of charter in Art 1 are not superior to the principles in Art 2.²³⁹ In the same vein he concludes that it is up to an individual state to define what actually falls within its 'domestic affairs'.²⁴⁰

Moreover, the Permanent Court of Justice and the International Court of Justice (ICJ) have also interpreted the non-intervention principle in their decisions.²⁴¹ The decision of Permanent Court of Justice in *Decrees on Nationality* case did not directly concern with human rights as these were not given in the Covenant, however it did address the principle of non-interference in these words 'the question whether a matter is exclusively within the limits fixed by international law', and that 'the question whether a matter is solely within the domestic jurisdiction of the State is a relative question, the answer to which depends on the development of international relations'.²⁴²

Similarly, the ICJ has also in number cases elaborated this issue in more detail.²⁴³ Although there are few cases that have a direct relation to the human rights concerns but the study of these cases does confirm that it is upon the discretion of individual state to determine what actually falls within the domain of Art 2(7). However, as one author conclude that at least gross and persistent human rights violations are legitimate concerns for international community and the wording of

²³⁹Ibid, 71.

²⁴⁰Ibid, 83.

²⁴¹ This principle was given in Covenant on League of Nation, Art 15(8) and also enunciated in the UN Charter Art 2(7).

²⁴² National Decrees Issued in Tunis and Morocco, 1923 as quoted in B. Simma(ed), *The Charter of the United Nation : A Commentary*, (Oxford: OUP, 1994), 142.

²⁴³ The list of cases is: Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania, advisory Opinion, 30 March 1950; the *Nottebohm* case, 6 April 1955; the case of *Certain Norwegian Loans*, 6 July 1957; the *Interhandel* case, 24 October 1957; and the case *Concerning Rights of Passage over Indian Territory*, 26 November 1957.

Art 2(7) is no bar to it.²⁴⁴ Similarly, according to Lauterpatch that the international community and the UN are competent to make recommendations, and may also investigate gross and persistent human rights violations without in contravention with the UN Charter.²⁴⁵

The view that Art 2(7) is not a hindrance to the international action against human rights violations is based on three assumptions; firstly, human rights are related to the general purposes of UN as define in the Charter, secondly, the peculiar nature of human rights issues and finally, the interpretation of the wording of Art 2(7).²⁴⁶

Authors like Lauterptch maintain that the codification of human rights law have transformed human rights into international concern and could no longer come within the ambit of domestic affairs only.²⁴⁷ This opinion is also augmented by the final document of Vienna Declaration and Programme of Action in 1993 by stating that:

The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community.²⁴⁸

With the development of international law generally and human rights law particularly this opinion gained strength as some authors claim that: '[National] sovereignty is subjected to some internationally recognized constraints, such as respect for human rights. Such constraints are enshrined in international conventions to which governments

²⁴⁴ LB, Sohn, "International Law of Human Rights: a Reply to Recent Criticism", *Hofstra Law Review*, 9, 349.

²⁴⁵ Hersch Lauterpatch, *International Law and Human Rights* (London: Stevens and Sons, 1950), 213-214.

²⁴⁶ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 96.

²⁴⁷ Hersch Lauterpatch, *International Law and Human Rights*, 177-78.

²⁴⁸ Vienna Declaration and Programme of Action, 1993, s II, para 2.

have committed their sovereign States.²⁴⁹ Further, the adoption of many international human rights instruments and almost two-thirds of the states of the world have accepted human rights obligations through different international and regional human rights conventions have played a significant role in internationalizing human rights issues.²⁵⁰

Furthermore, several states whose constitutions have been drafted after 1948 have inserted many provisions of UDHR in their respective constitutions and have now become part of their domestic legal system. For example the preamble to the constitution of Zaire states that ‘...proclaiming our adherence to the Universal declaration of Human Rights and the African Charter on Human and Peoples’ Rights’. Similarly preamble to the Constitution of Benin also contains almost the same words.²⁵¹

It is generally argued that the Art 2(7) has to be interpreted in the light of purposes and principles of the UN and that these should not be dictated by the notion of domestic affairs of the state.²⁵² The Charter provides the promotion of human rights as one of the major purposes of the UN and the contention that human rights issues are solely within the domain of domestic affairs of the state as it concern only the state and its subject as provided in Art 2(7), this would contradict Art 1(3) of the Charter.²⁵³

²⁴⁹Serageldin and Landell-Mills, “Governance and the External Factor”, Paper presented to the Annual Conference on Development Economics, 25-26 April, 1991, 9.

²⁵⁰ As of 2015, the European Convention on Human Rights and Fundamental Freedoms had received 47 ratifications; the American Convention on Human Rights 23(it was 25 but Trinidad and Tobago and Venezuela denounce their ratifications); and the African Charter on Human and Peoples’ Rights 51 ratifications.

²⁵¹ AP, Blustein and GH, Flanz, *The Constitutions of the Countries of the World* (New York: Ocenana, 1992).

²⁵²AAC, Trindade, “The Domestic Jurisdiction of States in the Practice of the United Nation and Regional Organizations”, *International and Comparative Law Quarterly*, 25, (1976), 737.

²⁵³Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 97.

This opinion is also supported by the work of General Assembly (UNGA), Security Council (UNSC) and Commission on Human Rights. Historically, the UNGA has always discussed the human rights issues in different states and also passed resolutions from time to time in order to address these issues. In the same vein the Commission on Human Rights also did a commendable job in this respect and its work is not seen as an intervention in the domestic affairs of the state. Similarly, the Security Council has the history of validating intervention on humanitarian basis in state where the human rights situation reached to the worst level, as it did in Rwanda in 1994.²⁵⁴ So it is now convenient to conclude that Art 2(7) is no longer considered by the international community as a hurdle in order to take human rights issues of domestic nature and address them internationally.

Now we will reiterate the position of the Bank and the Fund regarding human rights. The Bank considered that due to Art IV, s 10 of Articles of Agreement it is barred from taking into consideration internal political affairs of the recipient state and maintains that 'only economic considerations shall be relevant' to the Bank and its staff. This issue surfaced during the controversy between UNGA and the Bank over the financial assistance to two states that were known for gross human rights violation.²⁵⁵ The UNGA passed a resolution regarding South Africa and Portugal and prohibit the Bank from giving financial assistance to these states which the later endorsed.²⁵⁶ Later the Bank accepted the view that it did take into consideration in its operation, but it also asserted

²⁵⁴ Security Council Resolutions 912(1994),918 (1994), and 925 (1994).

²⁵⁵ Ibrahim Shihata, *The World Bank in a Changing World: Selected Essays*, compiled and edited by F. Tsofen AR. Parra, 133.

²⁵⁶ Ibid.

that these political considerations have economic consequences for the recipient state.

The Bank states that:

...by virtue of Article IV, section 10, of its Articles of Agreement, the Bank, in exercising its judgment, must consider such economic effects together with all other relevant economic factors, in light of the purposes of the Organization. What it is precluded from considering is the political character of a member as an independent criterion for a decision.²⁵⁷

In a nutshell, the human rights protection is guaranteed through UN charter and as discussed above human rights do not fall within the exclusive domestic jurisdiction of the state. Moreover, the Bank has accepted that the Bank will pay attention to the political consideration if it has bearing on the economic health of the state. Hence, it provide a possible avenue and a nexus may be made between economic situation of the state and respect for human rights that it would enable the Bank to pay heed to these concerns.

As for the Fund there is no such provision in its Article of Agreement and therefore, in theory it is not prohibited from taking political consideration. But the Fund in operation follows the same line as the Bank and focuses mainly on economic consideration.

3.2 Legal Status of the Two as Specialised Agencies of the UN

We have discussed these two institutions through prism of international legal personality and its link with human rights it is pertinent here to evaluate their status as specialized agencies of the UN.

The UN structure may be divided into two layers. The first one is consist of the main organs mandated by the Charter i-e the UNGA, the UNSC, the ECOSOC, the ICJ

²⁵⁷ Memorandum of the Legal Department of the IBRD, 5 May 1967. UN doc A/6825, 1967.

and the Trusteeship Council, and second layer consists of those organs that facilitate the UN to carry out its mandate.²⁵⁸ Article 57 of the Charter provides the details of these intergovernmental organizations in these words '...established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields...' and further these agencies is to be brought into the fold of UN through an agreement with ECOSOC with subsequent approval of the UNGA.²⁵⁹ The Fund and the Bank have such agreements with the UN.²⁶⁰ These agencies and more particularly these two organizations have independent position as compared to the main UN organs.²⁶¹ The question arise here that what actually is the legal significance of these agreements. Skogly maintains that 'the part of the reasoning behind bringing these organizations into a formalized relationship with the UN must have been to grant them, both legally and practically, rights and obligations in relationship to the UN, which would have been different if they were not brought into this relationship through the agreement.'²⁶²

Moreover, some argue that before the relationship agreement as mandated by Art 57 of the Charter a specialized agency does not enjoy rights and duties towards the UN.²⁶³ Now the real question arises here that after their relationship agreements do these agencies are bound by the UN Charter and the entire subsidiary covenants such as human rights conventions inter into by the UN?

²⁵⁸ UN Charter, Art 7(2).

²⁵⁹ Ibid, Art, 57 & 63.

²⁶⁰ Relationship Agreement Between the UNO and IMF, 25 November 1948; Relationship Agreement Between the UNO and IBRD, 25 November 1948.

²⁶¹ Relationship Agreements, Art 1.

²⁶² Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 100.

²⁶³ B, Simma(ed), *The Charter of the United Nation : A Commentary*, 799.

According to traditional international law only those actor are bound by the treaty provisions that have ratified it or acceded to it later. Secondly, the legal position of these organizations is not the same as that of the States and thus their respective rights and obligations also differs but does it mean that after entering into agreement with the UN they assume some obligations in regard to these instruments?

The answer is found in the work of Amerasinghe, he maintains that the international organisations although not member to a treaty, may in some cases assume the treaty obligations.²⁶⁴ He supported his argument by giving examples from space activities and environmental issues.²⁶⁵ This opinion is also amplified by the statement of Special Rapporteur on the draft Convention on the Law of Treaties between States and International Organizations or between International Organizations that:

...it would be rather difficult to accept that international organizations, the vast majority of whose members are State Members of the United Nations, could disregard the rules of the Charter.²⁶⁶

The minimum legal implication for these specialized agencies would be to conduct its operation not in contravention of the principles and purposes of the UN Charter that also include human rights provisions. Additionally, these organizations are also under legal obligation to respect the human rights obligations of the member states under the Charter which are recognized as superior under international law on the basis of Art 103 of the Charter.²⁶⁷

²⁶⁴CF, Amerasinghe, *Principles of the Institutional Law of International Organizations* (Cambridge: CUP, 1996), 246-47.

²⁶⁵ Ibid.

²⁶⁶ Yearly International Law Commission (YILC), Vol. II, 1975, para 5.

²⁶⁷ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 101.

Similarly, Article 30 of the Vienna Convention on the law of treaties the principle that in case of conflict in treaties between the states and international organizations and the treaties between international organizations.²⁶⁸ As for as treaties between states are concerned there is general agreement that in case of conflict Art 103 will prevail, as states are members of the UN so they have to observe the Charter.²⁶⁹ This is of great importance for our discussion because the treaties of these organizations with the member states are international treaties and thereby subject to the provisions of Art 103.

The second half of the question regarding the treaties between international organizations only remained unclear in the discussion of the Commission in 1977. Some argue that as the international organizations are prevented from membership of the UN so the same is not applicable here.²⁷⁰ However, in the later years the situation become clear as the Commission reached an agreement, and it was declared:

The United Nation Charter, which was a treaty between the Member States of the United Nation, was special in nature in that its provisions were, as stated in its Article 103, hierarchically, superior to those of any other treaty, whether earlier or later and whether between States, between States and international organizations, or between organizations.²⁷¹

Thereafter, the states follow the same discourse and in case of conflict between international treaties and the UN Charter the latter prevail. Similarly, the provisions of the Charter also take preference in respect of treaties between international organizations.²⁷²

²⁶⁸ For overall discussion see generally, Summary Records of the 1438th meeting of the International Law Commission, 10 June 1977, YILC, 1997, vol I.

²⁶⁹ Ibid, para 2.

²⁷⁰ Ibid, paras 2 and 4.

²⁷¹ YILC 1982, vol 1, para 12.

²⁷² B, Simma(ed), *The Charter of the United Nation. A Commentary*, 1119.

However, if one accepts these arguments there still remain confusion regarding the nature of human rights obligations given in the Charter. The human rights provisions in the Charter are very general in nature except the non-discrimination principle.²⁷³ Moreover, the Charter provides a little explanation to the concept of human rights; however, the UDHR does provide an interpretation to the human rights provisions of the Charter.

3.3 Institutions Composed of Governments with Human Rights Obligations

This is another way through which a relation could be made between the two institutions and international human rights law. These institutions are composed of governments that have nexus to the international law as well as human rights law. One argument that is advanced generally is that these institutions came into existence prior to the adoption of the UN Charter and that the ratifying governments are not bound by the human rights provisions of the Charter.

This argument may hold good for those states that are the founding father of these institutions or those that have ratified it before the come into force of the UN Charter. But as we have discussed earlier that the UN Charter has a special place in international law under Art 103 and 'hierarchically superior' to any other treaty, whether earlier or later.²⁷⁴ The current discussion is not about whether the human rights obligations are include in the Article of Agreement of these organizations at the time of its inception but it focuses on their current position as subjects of international law just like any other subject.

²⁷³ UN Charter, Preamble, Arts 1(3), 13 and 50.

²⁷⁴ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 106.

Consequently, just like states they are under legal obligation to respect international law irrespective of any given time.²⁷⁵

Furthermore, by establishing these institutions the states extend some of their international obligations to them but it does not exonerate states from their obligations and the states cannot claim that by establishing these institutions they have lessened their obligations.²⁷⁶ The interpretation to Art 103 as mentioned before also reiterates this position that the provisions of the Charter will take precedence in case of conflict. Resultantly, when acting as a member of the Bank and the Fund the state retain human rights obligations but on the other side the human rights obligations of the two institutions are not identical to their member states. This point will be discussed below.

The content and extent of human rights obligations of the state depend upon the amount of ratifications the state have and the nature of the instrument ratified. In case of the members of the Bank and the Fund almost two thirds have ratified the two covenants of human rights; hence the minimum human rights obligations for these states would be those under UN Charter and customary law.

Likewise, the human rights obligations of the state also depend upon whether the state is a creditor or a debtor of the Bank or the Fund. When state ratifies human rights convention it assumes domestic obligations to the individuals. In other words it creates rights obligation between the state and the individuals. Now in a debtor state the individuals' obligations as protected under the Charter will take precedence over the

²⁷⁵ Ibid, 107.

²⁷⁶ M. Singer, "Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns", *Virginia Journal of International Law*, 35 (1995), 58.

obligations taken under agreements with the Fund or the Bank.²⁷⁷ Thus, the debtor state may refuse conditions attached to the loans by the two institutions if the same are in contravention of the human rights obligations of the state under the UN Charter.²⁷⁸

3.4 Different Levels of Obligations and the Principle of Core Content of Obligation

Before we discuss the human rights obligations of the two institutions it is important to analyse the nature of civil and political rights on the one hand and social, economic and cultural rights on the other hand. For the sake of discussion it is noteworthy that human rights are mainly the same whether it relates to civil and political rights or economic, social and cultural rights. Both sets of rights had their origins through normal procedures of making international law and the UDHR has treated both sets of rights on equal footings. These two sets of rights are codified through two separate international covenants.²⁷⁹

It is generally maintained that civil and political rights are generally respected through non-interference by the state in certain cases. However, there are number of civil and political rights that entail positive measures on the part of the state in order to fulfill its obligations.²⁸⁰ For example commenting on Art 6 of ICCPR the Human Rights Committee held the right to life has:

²⁷⁷ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 107.

²⁷⁸ E. Denter, *Law and Policy of IMF Conditionality* (The Hague: Kluwer Law International, 1996), 58-70.

²⁷⁹ International Covenant on Civil and Political Rights (ICCPR), 1966; and International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. Together with UDHR they are also called International Bill of Rights.

²⁸⁰ International Council on Human Rights Policy, *Local Perspectives: Foreign Aid to the Justice Sector* (Geneva: International Council on Human Rights, 2000), 56.

...been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that the States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.²⁸¹

The same argument resonates in Art 2 of the ICCPR and provides that the member states of the Covenant should 'to respect and to ensure' the rights mentioned in here. Similarly, the Human Rights Committee in its General Comment on Art 2 held that:

The Committee considers it necessary to draw the attention of the States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that states parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the State parties to enable individuals to enjoy their rights. This is obvious in a number of Articles... but in principle this undertaking relates to all rights set forth in the Covenant.²⁸²

In the same way, it is generally believed that economic and social rights may call for the government to take positive measures in order to ensure these rights, however, in number of situations these rights would just need non-interference from the government to be enjoyed by the people. For instance, in developed countries with stable economies the people generally find jobs easily and earn enough to satisfy their basic needs i-e housing and food and what the people there want from the government is non-interference so they can enjoy these rights. This situation is summed up nicely by Donnelly who introduces the concept of negative and positive rights. By negative rights he means those rights for which few or no provisions are required while on the other side the positive rights need

²⁸¹ Human Rights Committee, General Comment 6(16)d, (1982), 93.

²⁸² Human Rights Committee, General Comment No. 3, UN Doc, HRI/GEN/1/Rev 1, 4.

active role from the government. He emphasizes the role of a particular situation in making a right positive or negative rather than a particular right is being discussed.²⁸³

Now, for the human rights concern States parties to conventions and covenants are the principal obligation holders and they are bound to fulfill the three levels of obligations i-e to respect, to protect and to fulfill. When a human rights concern arises then it depend upon a particular situation that decides which obligation is triggered whether it requires the non-interference, protection, or a positive action on the part of the state.

Moreover, dissection of an individual right reveals that every right has a minimum core content which is proportionate to minimum obligation level. In other words the minimum core is the minimum level of fulfillment to be granted to every one without discrimination. In simple words it is 'universal' and the minimum threshold for the human to live in dignity and varies from right to right. This situation is rightly summed by Philip Alston when he states that:

The fact that there must exist such a core (which to a limited extent might nevertheless be potentially subject to derogation or limitations in accordance with relevant provisions of the Covenant) would seem to be a logical implication of the use of terminology of rights. In other words, there would be no justification for elevating a 'claim' to the status of a right (with all the connotations that this concept is usually assumed to have) if its normative content could be so indeterminate as to allow for the possibility that the right holders possess no particular entitlement to anything. Each right must therefore give rise to an absolute minimum entitlement, in the absence of which a State party is to be considered to be in violation of its obligations.²⁸⁴

²⁸³ J. Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell UP, 1989), 33.

²⁸⁴ P. Alston, "Report on the First Session of the UN Committee on Economic, Social and Cultural Rights", *American Journal of International Law*, 81, 1987. 352-53.

Similarly, Committee on Economic, social, and Cultural Rights has reiterated the position and in its General Comment on Article 2 emphasizes on the importance of 'core obligation' states that:

...minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would largely be deprived of its *raison d'être*.²⁸⁵

However, it is pertinent here to mention that the fulfillment of these minimum core obligations requires not only the right-to-right approach but also the internal situation of a particular country must also be taken into account. So the criteria of acceptable fulfillment set for a country like Pakistan may be different for a developed country like Norway. This is based on the principle set forth in Art 2(1) of ICESCR that pertains to the 'progressive fulfillment' of human rights by the State through 'exhaustion of available resources'.

The general concept that has developed over the time in both the Bank and the Fund that the policies of both the institutions generally and SAPs in particular are cure for the restructuring the economic policies of the recipient state, and that the short term effects may not be satisfactory but in the long run economic results will be better.²⁸⁶ It means better conditions for enjoyment of economic and social rights. But question arises here that in order to achieve long term goal do these institutions justified violating human

²⁸⁵General Comment No.3, 1993, para 10.

²⁸⁶ World Bank, *Making Adjustment Work for the Poor: A Framework for Policy Reform in Africa* (Washington DC: World Bank, 1990), 3.

rights in short term? While addressing this issue the 'core content' of a right must be bear in mind. Now, if the policy prescriptions advised by the two institutions in the shape of SAPs are unable to address the concept of core content of right in short term then the proposition that it will improve human rights situation in the long run is not maintainable.²⁸⁷

Moreover, if the two institutions while not compromising the minimum core content of a right provide a clear policy prescription in order to achieve better and sustainable human rights situation in the longer run then slight decline in human rights situation may be permissible in the short run.²⁸⁸ But here states have to assess the situation in order to maintain a fine balance between decline in human rights situation and the violation of core content of the right.

3.5 Minimum Human Rights Obligations of the Two Institutions

As we have discussed before that the legal position of the two institutions with respect to human right obligations is not the same as that of states. Because the two institutions are not parties to the human rights treaties, as on most occasions these treaties bind the member states only. However, it does not mean that these international human rights treaties are without any leverage for operational sphere of these institutions. In simple words a minimum of human rights obligations may be assign to these institutions as well as their member states.

²⁸⁷ Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 150.

²⁸⁸ *Ibid.*

In the preceding pages we have mentioned three levels of obligations i-e to respect, to protect and to promote. At minimum the two institutions are bound to *respect* the human rights concerns as the remaining two levels of obligations are somewhat beyond their legal mandate as enshrined in their legal instruments and particularly the promotional aspect of human rights needs much more active policy measures.²⁸⁹ Moreover, the obligations to protect and to promote are mainly contained in international human rights instruments to which these two institutions are not parties and to assign these obligations would be to stretch their legal mandates in accordance with human rights law.

The obligation to respect is also justified through customary international law and also through general principles of law as it become part of it. This aspect of obligation has two facets: first a negative obligation that due to their policy prescription the human rights situation does not deteriorate and secondly to observe the current human rights situation in its operations.²⁹⁰ For example, a case could be made that the two institutions may prescribe economic policies that could curtail the existing trade union rights that find legitimacy from both domestic law and also from international human rights law.²⁹¹ But this is not legitimate for the institutions if one takes the respect aspect of human right obligation.²⁹² But it may not be legally feasible to assign to the institutions to introduce policies that would established new trade union rights as it is consider as a 'promotion' aspect of obligations. No wonder if the institutions themselves choose to do so then it will

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ R. Plant, *Labour Standards and Structural Adjustment* (Geneva: ILO, 1994).

²⁹² Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 150-51.

be legitimate for them. In other words the institutions are not restrained from taking the obligation to promote or protect human rights concerns.

It is important to keep in mind the fine distinction between the core content of a right and the right as such. The core content of right to food is the accessibility of actual food items similarly the content of right not to be tortured is the absence of tortuous practices. Maastricht Guidelines summed this situation in para 8 (margin of discretion)

State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of *universal minimum standards* and the common understanding of the scope, nature and limitation of economic, social and cultural rights.²⁹³[my emphasis]

According to Skogly the two institutions are under obligation to respect the human rights in a particular state in such a way and to such a level as they were enjoyed at the time of their first operation whether it relates to core content or wider content.²⁹⁴ The approach of the two institutions must be to evaluate the human rights internal situation of each individual state and there is no general rule for their operations but in no case they may threaten the core content of the right.²⁹⁵ For example in a country like Pakistan if the Bank is to respect the right to food in agriculture development programme, the programme may be planned keeping in view this right. So the Bank has to keep in mind the dynamics like current nutritional level, accessibility of the people to food generating activities, cultural restraints etc. Similarly, for the right to education a comparative study of

²⁹³Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 1997, para 8. Available on: https://www1.umn.edu/humanrts/instrree/Maastrichtguidelines_.html (last visited 15/04/2016).

²⁹⁴Sigrun Skogly, *The Human Rights Obligations of the World Bank and The IMF*, 153.

²⁹⁵ Ibid.

the situations before and after the implementation of a particular programme has to be conducted.

In order to discuss the impacts of SAPs on human rights I will to choose the right to education and food as examples.

3.5.1 The Right to Education

The right to education is part of many international and regional human rights instruments.²⁹⁶ The two important international human rights instruments i-e UDHR and ICESCR in Articles 14 and 16 respectively stipulate primary education compulsory and free for all. The research available on the impacts of SAPs reveals that there is introduction of school fees, cuts in education budgets and also decrease in the enrolment rate in primary school. For example in Nigeria these impacts are quite evident as there is decrease in enrolment rate (90% in 1980 to 64% in 1987) and decrease in public spending on education (9.7% of national budget in 1979 to 4.4 % in 1980-85 which was further trimmed down to 3.1 in 1986-90) that indicate the worsening of economic situation.²⁹⁷ 'In an attempt to offset the effect of federal budget cuts, cost recovery measures were introduced by various State governments. These contributed further to the enrolment decline as education costs become unbearable for families that were suffering from retrenchment and/or substantial reduction in real incomes.'²⁹⁸

This is also corroborated by studies of the Bank on Social Effect of Policy Reform. The report dissects the impacts of supply side and demand side. The supply side

²⁹⁶UDHR, Art 26; ICESCR, Arts 13 & 14 etc.

²⁹⁷A. Adepaju (ed), *The Impact of Structural Adjustment on the Population of Africa. The Implications for Education Health and Employment*, 100.

²⁹⁸ Ibid.

according to the report 'consists of schools and institution plus teacher and teaching prices'. While the demand side consists of household income and also prices, this has a direct connection with the amount of education demanded.²⁹⁹ The study concluded that the measures stipulated in SAPs mostly effects the supply side because the recipient government usually put short run cuts in the public spending to make amends for fiscal deficits that results in reduction in incomes that ultimately weakens the demand side.³⁰⁰

Therefore, one may presume that the introduction of fees in the school is one of the results of SAPs. The preceding discussion confirms that fees factor in primary school is a hindrance to the right to education. This does not imply that private schools where fees are charged are prohibited rather every person should have access to free primary education.

Now who is responsible for these budget cuts? The commentators are divide on this issue some argue that the cuts are dictated by these two institutions while others hold that government are free in this sphere and it is upon the government to introduce such cuts or not. However, the UN Economic Commission for Africa maintained a middle course that the aim of the reduction on education in Africa was to reverse the process and to bring structural transformation in Africa.³⁰¹

However, as for as human rights obligations are concerned we study that state is the primary obligation holder and the deteriorating situation of human rights is mainly the

²⁹⁹ L. Demery et al, *Understanding the Social Effects of Policy Reforms*(Washington DC: World Bank, 1993), 115.

³⁰⁰ Ibid.

³⁰¹ UN Economic Commission for Africa, 1993, 24.

Available on: <http://repository.uneca.org/handle/10855/15214> (Last accessed 15/ 03/ 2016)

responsibility of the state so the cuts in spending on education and introduction of fees in primary education lies on the government. But when the policy measures that stipulate cuts in expenditures on certain areas are dictated by the Fund or the Bank then they assume much more responsibility for human rights concerns. They shared responsibility with the national government for human rights obligations. The two areas of operation are projects and programmes and they are considered as 'joint ventures', where not only finance, but also the planning of the measures to be taken is done through partnership. Due to secrecy of the way which SAPs are negotiated, it is difficult to say exactly who is responsible for what. Nevertheless, when the programmes are planned it certainly needs the prior sanction of the Fund and the Bank and at that time they have the opportunity to assess the adverse effects of the measures on human rights.

Resultantly, if the finance ministry in the recipient government proposes cuts in public spending the Fund and the Bank will be in a position to raise the human rights concerns. Similarly, if the government proposed measure results in human rights violation both institutions may propose alternative measures to achieve desired financial goals without negative impacts on human rights. In simple words it is the obligation of the two institutions to predict (through planning process) and monitor the negative impacts of their policy measures on human rights and must endeavor to find alternative option in collaboration with the national government.

Moreover, the right to education must also be on non-discrimination basis. If the education become expensive then there will natural tendency that girls will be deprived

of their right to education and the people will tend to send boys to school. This will result in violation of non-discrimination clause of the ICESCR.³⁰²

3.5.2 The Right to Food

The right to food is guaranteed by many international human right instruments.³⁰³ Article 11 of ICESCR guarantees the 'right to adequate food' and 'freedom from hunger'. In pursuance of this Article the UN showed its interest to find out the real statistical data that could indicate the situation of right to food all around the globe.³⁰⁴ The studies indicate that the per capita availability is not the sole indicator to satisfy the right to adequate food rather it is the availability of food to all segments of the society at all times and places without discrimination.³⁰⁵

In order to find out the impacts of SAPs on the right to food it is mandatory to determine the effects of hike in consumer prices, removal of subsidies and change in production patterns and levels and whether they significant enough to cause problem for right to food. This has to be done on case-by-case basis, as the effects of programmes will vary.

The impacts of SAPs are often more evident in countries that implement SAPs as effect both access to food for consumption as well as agriculture development. The recipient states are generally those countries that are faced with foreign exchange deficit and in order to increase their export earnings the agriculture production is often been

³⁰² ICESCR, Art 2.2

³⁰³ Article 25 of UDHR and Article 11 of ICESCR.

³⁰⁴ K. Tomasevski, *Development Aid and Human Rights* (New York: St Martin's, 1989), 124.

³⁰⁵ General Comment No 12, *The Right to Adequate Food*, UN Doc E/C12/1999/5, para 6.

shifted from food production for domestic consumption to cash-crop production.³⁰⁶ Resultantly there are many countries that were self-sufficient in consumption food are now have to import a large amount of food, partly due to above mention production shift and partly due to population growth.³⁰⁷

As we discussed above that how SAPs impacted the right to food depends upon many variables and one of these variables is the removal of subsidies. It is generally believed that the removal of subsidies have less effects on those state where large chunk of population lives in rural areas as the removal of subsidies will results in price hike that will ultimately benefit rural farmers. But the increases in prices have negatively impacted the rural poor as they are the end purchaser of food and secondly the hike in prices of the no-agriculture products has overwhelmed the agricultural profits.³⁰⁸

However, states where there is large urban population, mainly dependent upon buying food items the impacts are quite severe. The end of subsidies may negatively affect these segments of population. As a result, fulfilling the right to food ought to be used as an agenda for designing policies related agriculture and food production.

Therefore, it is advisable that both institutions in order to ensure that they respect the right to food in any SAP, or agriculture project must assess, with the help of respective government, how their projects and programmes are likely to affect the right to food.

³⁰⁶SigrunSkogly, *The Human Rights Obligations of the World Bank and The IMF*, 158.

³⁰⁷ Ibid.

³⁰⁸ UN Commission on Human Rights, "The Right o Adequate Food and to be Free From Hunger", 1999. UN Doc E/CN4/Sub2/1999/12.

Conclusion

From the discussion of this chapter we are able to understand now that the sources of human rights obligations for the Fund and the Bank are limited to the human rights provisions of the UN Charter, to customary law, and general principles of international law. In other words these may be invoked in terms of accountability of these institutions.

However, this does not imply that other sources of human rights law are without importance. The two covenants on human rights do provide general standards of international human rights law, both in terms of provisions of these covenants and also their interpretation by different human rights committees and commissions. Moreover, the two covenants, and in particular the ICESCR provide for interaction between the committees and these specialized agencies. This does not mean that these institutions are under obligation as they are not parties to these covenants like member states. However, if the two institutions themselves choose to take human right obligation then they can do so.

Furthermore, the two institutions in all possible way must protect the core content of the human right concerned. Although their obligation is not the same as state but in cases where their policy prescriptions results in violation of human rights then their responsibility increase and the two institutions, in collaboration with national government, may mitigate the negative impacts of their policies on human rights issues.

CONCLUSIONS AND RECOMMENDATIONS

In recent the world's two most influential financial institutions i-e the Fund and the Bank came under severe criticism even from its staunch supporters. The global experience with the project and programmes of these institutions showed a murky picture that raises many eye-brows. The increase in intensity of this criticism is the fruit of decade long phenomenon of 'globalisation' in which no human activity whether financial, cultural or technology is immune from criticism. It is the fruit of globalization that incentivized responsibility and accountability become more intangible. The internationalization of each and every issue results in more accountability for international players that also include transnational corporations, foreign governments or intergovernmental organisations. Resultantly, the Fund and the Bank also come under criticism from different circles and many of the principles and operations are being questioned and also call for change in their policies for human rights guarantees.

The initial purpose of the two institutions was quite different as these were mainly financial institutions that aimed to recover the war torn global economy after WWII. As we have discussed this in Chapter I but with change in world economy and development of human rights law their role evolved with passage of time. We also established that these two institutions have international legal personality as their ability to enter into

relationship agreement with states as well as other international organizations such as UN.

Building upon these foundations, the study argued that the two institutions are bound by treaty provisions to which they are parties, to customary international law, and to general principles of law. However, we discussed that the nature of their obligations is not the same as that of state because most treaties are not open to these institutions while state have general right to become parties of the treaties of universal nature and secondly, they do not have law-creating capacity of states, hence they are bound by treaty provisions even if they are not able to consent to be bound by them.

The study suggested that the main source for human rights obligations of the two institutions is their relationship agreements with the UN as provided under Art 63 of the Charter. This would imply that the institutions are under an obligation to respect the provisions and principles of the UN Charter which also include respect for human rights and fundamental freedoms.³⁰⁹ Building on this, the subsequent development of international human rights law through different human rights convention, customary international law, and general principle of law will also provide some kind of human rights obligations for these institutions. But again the nature of their obligations is not identical to that of states, mainly because these institutions do not have human rights obligations under their constitutions and also because they are not parties to the human rights covenants.

³⁰⁹ UN Charter, Art 1(3).

The study went on to discuss the different level of obligations i-e to respect, to protect and to fulfill. It is concluded that the two institutions are under legal obligation to respect the human right and not to make human rights situation worse while the obligation to protect and to fulfill would be beyond their legal mandates. As these two levels of obligations need a much more active policy measures that would be to stretch their legal instruments. This however, does not preclude these two institutions from taking the responsibility to protect or to fulfill human rights and it is also equally legitimate under international law.

Moreover, the obligation of the two institutions to respect human right is legitimate and they may be held accountable for that but this does not mean that the states are relieved from their responsibility to respect, protect, and to fulfill their human rights obligations. The Fund and the Bank will have a share responsibility with the states.

In last chapter we also provide the mechanism for how the obligation to respect may be adopted by the two institutions in their operations. The right-by-right and case-by-case approach may be adopted together with project-specific or programme-specific assessment. In simple words one shoe fit all approach should be abandoned. We discussed two very prominent socio-economic rights i-e the right to education and the right to food and pointed out how the two institutions may invoke this mechanism.

In a nut shell the international law must consciously develop a more robust human rights policy for the two institutions than recognized by them currently. The international human rights law dictate that the two institutions at minimum should respect human rights concerns in their policies and to ensure that there is no violation of human rights

through their policies. But the Fund as well as the Bank do not accept any legal obligations in this area and rather pay a lip service to human rights concerns.

Now, where should the future research and analysis go? The current study is limited in its scope and it mainly analyse the current human rights law and whether these intergovernmental organisations are accountable for human rights issues but the there will always be deficiency because the current set of rules are meager to set standards and legal obligations for these institutions. But the most important question would be that if the current international law and human rights are efficient enough to provide a full legal responsibility for these institutions then what would be the redress possibilities?

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