

ARTICLE

LAW AND DEVELOPMENT: A NEW JURISPRUDENTIAL DISCOURSE CHALLENGES, PROSPECTS AND INITIATIVES TO LINK DEVELOPMENT WITH HUMAN RIGHTS

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The article talks about the 'threshold ability' i.e. the ability of a person to empower himself to such an extent that he can avail of his political and civil rights. The author argues that this threshold ability cannot be attained unless and until an entity has social and economic rights which allow him to partake in development and address his basic needs. Hence, in the absence of socio-economic rights; so called 'fundamental rights' that consist of political and civil rights are ephemeral and moot. Hence, the author calls for a concerted effort to guarantee socio-economic rights and calls for them to be placed at par with political rights.

I. POVERTY AND RIGHT TO DEVELOPMENT, AND LAW: IRRESPONSIBLE INTERNATIONAL POLITICS AND CONSEQUENCES.....	2
II. INTERNATIONAL POLITICS ON HUMAN RIGHTS AND PLIGHT OF POWERLESS PEOPLE.....	12
III. UN EFFORTS TO INSTITUTIONALIZE THE RIGHT TO DEVELOPMENT AND POLITICS.....	22
IV. SOUTH ASIAN SCENARIO OF CONSEQUENCE OF INTERPLAY OF HUMAN RIGHTS VIOLATION, DEPRIVATION OF ACCESS TO DEVELOPMENT OPPORTUNITIES AND ILL-POLITICS AND GOVERNANCE	26
V. PERCEIVED THREAT OF NATIONAL SECURITY, INCREASED MILITARY SPENDING, RAMPANT BUREAUCRATIC AND POLITICAL CORRUPTION AND IMPACTS ON HUMAN DEVELOPMENT AND SECURITY.....	27
VI. RECENT ECONOMIC GROWTH IN SOUTH ASIA AND ITS IMPACTS ON LIVES OF POOR PEOPLE.....	36
VII. SOME MACRO-PROBLEMS AND EFFECTIVE STRATEGIES NEEDED TO PROMOTE HUMAN RIGHTS.....	39
A. India.....	43
B. Bangladesh.....	46

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C. Pakistan.....	48
D. Nepal.....	50
VIII. SOME COMMON ISSUES AND PROBLEMS RELATING TO POVERTY AND LAW.....	53
IX. IMPLICATIONS OF POVERTY ON HUMAN RIGHTS: ANALYSIS OF POVERTY AND HUMAN RIGHTS VIOLATION TRENDS.....	66
X. DIMENSIONS OF POVERTY AND THEIR IMPLICATIONS ON HUMAN RIGHT: SOME THEORETICAL SETTINGS.....	67
XI. POLITICAL IMPLICATION OF POVERTY AND DEPRIVATION	71
XII. SOCIO-ECONOMIC AND POLITICAL PROBLEMS SURROUNDING OF HUMAN RIGHTS VIOLATIONS.....	73
XIII. CONCLUSION.....	81

I. POVERTY AND RIGHT TO DEVELOPMENT, AND LAW: IRRESPONSIBLE INTERNATIONAL POLITICS AND CONSEQUENCES

Shiva Devi, a pregnant woman, mother of a three year old girl child, from a Nepal's countryside committed suicide taking rat poison. She poisoned her daughter as well. Both of them died instantly. Reportedly, starvation was the cause of her suicide. Shiva was a daily wage-earner, who lost her work because of a prolonged strike by a political party, supposedly fighting for a 'revolution. Her husband was away from home for works since the past three months. He left home to avoid the being forcefully recruited into the rebellion.²

Laxmi Maya, a poor woman in a village of Nepal was dragged out of her home and physically assaulted by a mob until she fell unconscious. The villagers believed that she was a 'witch' causing miscarriage of pregnancies in the village. The villagers not only condemned her for their unfounded or superstitious belief but also engaged in severe physical assault. To protect her life she agreed to ingest "human excreta".

A man in the state of Andhra Pradesh, India committed suicide because he could not pay back, the debt he owed the bank. The prolonged drought stole his chance of yielding good crops, the

² During the conflict period (1996-2006), the Communist Party of Nepal (Maoists) coerced people to pay donation or spare a member of the family to join its armed force, the People's Liberation Army (PLA). To avoid this risk, many adult left villages to India leaving old parents and children at home. It was treacherous time in Nepal. Besides, the nation was seized by frequency of 'nation-wide violent strikes' which prevented poor people from works. Indeed, poor people were forced to starve. See, Annual Human Rights Yearbooks; INSEC, Kathmandu, Nepal.

only source for paying the debt back. His family was starved. In such an intense stress he had no option left but to end his life. He thus hanged himself from a tree.

A landslide swept away the house of a poor Chepang family, a hill tribe in Nepal. The daughter-in-law was expecting a baby shortly. The landslide also washed away a few kilograms of the rice the family was saving for the day of her delivery. The family had nothing to feed the daughter-in-law with. They were forced to live with "tarul and vhaykurs" (roots of wildly grown plants).

A child was caught in a bomb-blast in an Indian city when he was rushing home after school. The deceased child was the only child of his parents.

These are only a few representative stories about 'the cruel reality of life' associated with poverty and deprivation' in South Asia and many other parts of the world as well. Such forgotten incidents are neither remembered nor mourned for media in South Asia is emphatically interested in 'political gossip' rather than in exposing such type of incidents. Of course, these stories are reflective of many more things. The stories implicitly suggest that

- a. The Governments in developing countries are less interested in human security and less accountable for the same to its masses. The death traps created by poverty are ignored and forgotten.
- b. The media in developing countries is mesmerized by 'political gossip' but seems less enthralled by the death traps millions of people are strangled by.
- c. The economic systems pursued by developing countries are quintessentially exploitative, and addressing basic necessities of the masses isn't an urgency for them.
- d. The legal system in practice in developing countries lets-off Governments from accountability for the violation of basic human rights of people.
- e. The 'modality and selection of development programs' is considered a privilege of the Governments against the rights of the people
- f. Violence and impunity are emerging as a culture in developing countries. No response is found from State even in egregious cases. Terrorism and arms trade are burgeoning due to poverty and want.

The representative stories above illustrate the gruesome state of human rights violations faced by people at the bottom in the developing world. They explicitly reflect on 'the acute

state of poverty and deprivation that millions of poor from developing countries live in'. The poverty and deprivation expose common people to an utterly acute state of insecurity, the threat to the right to life being the most glaring one—every year over 18 million people die across the world pre-maturely due to poverty related causes, which is one third of all human deaths. Every day, fifty thousand people die due to poverty, of which thirty four thousand are children below five.³ The situation has witnessed no change at all. Since the end of cold war, ordinary deaths from starvation and preventable diseases have amounted to approximately 250 million, most of them children.⁴ Global poverty refuses to decline and global inequality continues to increase, more than doubling since 1960.⁵ The state of poverty and deprivation represents a state of 'gross violation of human rights'. The international community has failed to bring about changes in such a 'grotesque situation' of human security. By contrast, some intellectuals love to put arguments that 'the duty of international community to help poverty-stricken societies is not absolute because they are not responsible for this poverty'.⁶

The regressive status quo⁷ in developing societies is the main cause for persistence of poverty and deprivation as it blatantly refuses, or averts the development endeavors that are vital for bringing about changes in the lives of millions of deprived people. The 'state of regressive status quo' originates by persistent denial or deprivation of, or restriction on, equality in security of person, physical integrity, freedom of choice, access to basic welfare supplies, and access to right for participation in economic growth. Access to or freedom of enjoyment of

³See Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reform*; Cambridge: Polity 2002, at 2

⁴*Ibid* at 98.

⁵*Id* at 99-100.

⁶ Thom Brooks, "Is Global Poverty a Crime", at 2. Available online at <http://ssrn.org/abstract>, last visited October 29, 2011.

⁷ Regressive status quo can be epitomized in several ways. It is a state of 'traditionalism in behaviors' which dislikes changes in the prevailing paradigm of life. Politically, the phrase 'regressive status quo' represents a 'system of feudal governance' in which the accountability of rulers is fully ignored. Economically, the phrase typifies a 'system of transactions in which the power of bottom-line segment of the population for bargaining about their labor and commodity is suppressed'. Etymologically, the status-quo refers to a state of 'changelessness'. Regressive status quo denies changes in the 'prevailing conditions'. It applies rules of law and conventions to block the changes that are essentials for transformation of lives of the people towards modernity. A progressive change in the society is necessary for establish a new system where all people can have equity in development outcomes. The regressive status quo, however, averts equity for all in development outcomes. The progressive change in the society is epitomized by the following propositions: (1) every society is made up of individuals, groups and the state, and the interactions between these components determine the goals of the society; (2) the equity is the guiding principles for the State to exercise control over individuals and groups; (3) the State exercise this control through law for achieving social goals; and (4) the State applies law equally to all persons in an independent and rational manner. If these propositions function in a reverse way, the state of regressive status quo prevails.

basic needs— i.e. security of person, physical integrity, freedom of choice, subsistence supplies, education and economic participation—constitute the 'threshold ability of persons'⁸ for enjoying full-fledged human rights. Poverty is therefore an outcome of deprivation of such rights.

No doubt at all, the above stories point to a state of abject denial of 'the threshold ability' to millions of people in developing countries.⁹ The gruesome fact uncovered in these stories is that 'the governments in developing countries are less bothered with prioritizing the utilization of resources for 'generating threshold ability' and hence rescuing the millions living in a state of acute vulnerability. These stories also imply that no protection of human rights is possible without meticulously dealing with the state of gruesome disparity in incomes and access to opportunity of development, which is a prerequisite for acquiring 'threshold ability'. The 'threshold condition' of human rights empowers people's ability to assert their right to development, and this development, in turn, establishes a 'circumstance enabling people to enjoy full-fledged protection of civil and political participation along with freedoms of conscience and decision making on their individualistic or socialistic affairs '. Hence, human rights and development has an 'interface'. The interplay of these two is what the 'dignity of human life' is rested on.

Attaining a state of security and dignity demands a pragmatic but irreversible 'interplay between law and development'.¹⁰ Every society is comprised of individuals, groups and the State. The interactions between these variables of society, collectively determines social goals. Societies in developing countries are, however, utterly upset by a penchant for traditionalism or

⁸See Thom Brooks, 2011 at 2

⁹ The failure of the international community, the Governments of developed countries in particular, to generate 'threshold ability of people to enjoy rights to physical integrity, subsistence supplies, freedom of choice, education and economic participation' is the major cause of deaths of incredibly huge number of people around world today. As a matter of fact, millions of people are dying due to starvation and preventable diseases. The number is increasing as the gap of 'having and not having is widening ' indiscreetly. The inequality between individuals as well as as nations is becoming a serious challenge for 'security of the entire human civilization'. The lacking of 'threshold ability' prevents millions of people across the world to assert their inalienable and inherent rights to life, liberty and security', which constitutes a 'threshold condition for enjoyment of human rights guaranteed UDHR, ICCPR and many other similar human rights instruments. See, Thomas Pogge, 2002

¹⁰ The theory of demanding role of law in the larger context of social, economic and political development is not new one in jurisprudence. During 1960s and 1970s, two law and development scholars, David M. Trubeck and Thomas M. Franck, described this approach as "liberal legalism". On law and development movement generally, See; Benny Simon Tabalujan, 2001. *Legal Development in Developing Countries-The Role of Legal Culture; SSRN*. The key proposition of the approach is that the State should apply law equally to all persons in an independent and rational manner. Implicit in this approach is the belief that legal development is a necessary pre-requisite of economic development and that modern laws from developed countries can be imported as "legal transplants" into developing countries to fulfill the requirements. On "legal transplants" generally see: William Ewald, *Comparative Jurisprudence II: The Logic of Legal Transplants; 43 AM.J.Comp. L. 489 (1995)*

conventionalism indiscreetly permitting ' the disparity in treatment or advantages between individuals; individual and group, and; group on the one side, and the State on the other'. The disparity is often backed by deeply rooted 'hierarchical structure of that given society'. The hierarchical structure, on the other hand, requires the 'regressive status quo' for its continuity. The change in circumstance is necessary for positive transformation of the lives of people, which is attained by 'empowering people through generating 'threshold ability' in them to assert their inherent rights concerning their security of person, physical integrity, subsistence means, acquiring knowledge and skills for development and participating in the economic enterprise. The threshold ability, to make it functional, requires soundly grounded legal culture. But how society can develop the required legal culture 'amidst rigorous tendency of preserving the status quo is an unanswered question as yet. Some western jurists have proposed an easy approach: the developing countries can import laws from the developed countries.¹¹ Legal transplantation, however, is not as easy as described by them.¹² Laws reflect the mood of the people. Historically, they are developed to deal with specific problems faced by the given society. The laws of a society are meticulously designed by wider interactions between individual, groups and the State to formulate the goals of their society, and such interactions provide 'contents to

¹¹ Alan Watson figures one of the prominent advocates of 'legal transplants. For him legal transplant has been a common phenomenon through the history and was the most fertile source of legal development. See, Alan Watson, 1993. *Legal Transplants: An Approach to Comparative Law (2nd edition)* p. 95.

¹² The legal transplant movement which gained momentum during 1960s and 1970s through flurry of law modernization programs in Latin America, Africa and, to some extent, Asia lost its vitality in 1980s. The law modernization programs did not fare well as they were expected to do. With failures of these programs, the movement got put into low-profile. According to Patrick McAuslan, the movement lost momentum partly because its main emphasis was on structural and substantive law issue and it failed to determine the nature of relationship, causal or otherwise, between law and development more generally. See: Patrick McAuslan, *Law, Governance and the Development in the Market: Practical Problems and Possible Solutions in GOOD GOVERNMENT AND LAW: LEGAL AND INSTITUTIONAL REFORM IN DEVELOPING COUNTRIES* ; Julio Fundez ed. 1997, at 25 . In 1990s, the law and development movement regained its momentum once more time by emphasis of developed countries about law reforms in developing countries. This push of developed countries appeared through multilateral agencies like Asian Development Bank and individual agencies like USAID. However, the renewed momentum paid central focus on 'reforms of the governance system'. No doubt, the reforms of governance system required changes in the 'substantive framework of law', but the transplantation of the laws of developed countries could not be the central issue of the movement. The 'reforms of law movement' was found relevant more to the 'economic development' of the developing countries. Though the impact of the movement in overall economic development drive was only modest, it played reinforcing role in the process of social change in the developing countries. The movement's role was particularly crucial in identifying the relationship between legal development and the broader issues of economic, social and political development. For detail, see: Philip von Mehren and Tim Sawers, *Revitalizing the law and Development Movement: A Case Study of Title in Thailand*, 33 HARV. INTL. L. J. 67 (1994)

the law'.¹³ A society failing to set the goals corresponding to demands created by the change in that society naturally falls in traps of 'regressive status quo'. Socio-political movement for equity-based change backed by economic entrepreneurship is thus a prologue for development of a legal culture in a developing society. Development of the legal culture requires the following three pre-requisites to be fulfilled:

- (a) Emergence of an indigenous intelligentsia of law which can underscore the importance of interactions between the social facts and emerging needs of human development;
- (b) Formulation or determination of economic and socio-political goals on which the structure of the State has to be erected; and
- (c) Establishment or reforms of institutions to play role in planning laws addressing emerging needs of human development and economic and socio-political goals determined by the society.

The modernization of governance systems is a key element to facilitate economic, social and political development, and to protect human rights. The legal development has to correspond to the economic, social and political development of a given society. The relationship between legal development and other broader issues of economic, social and political development is imperative for protection of human rights in any society. Emerging issues of economic, social and political development push for rationalization of laws, and the newly adopted laws do therefore ensure the 'equity of all people in benefits or advantages of the economic, social and political development'. The laws of a society thus, have to embody human security and dignity as an issue 'of the development of legal culture' as well as human rights as a matter of concern of law as well as morality.¹⁴

¹³ The legal transplant theory was rejected as early 19th century by German scholar Friedrich Carl von Savigny. He believed that a nation had organic unity- over arching the individuals who constituted it and that nation's laws developed through a gradual embodiment of social norms within that community. (On Savigny's organic theory of law, see: *Of the Vocation of Our Age for Legislation and Jurisprudence*, Translated by Abhram Wayward, Littlewood & Co. 1831, at Ch II). In recent times many jurists have rejected the theory on several grounds. Robert Seidman, for instance, who coined the term "The Law of non-transferability of Law" argued that transference of rules from one culture to another would not work because a rule cannot be expected to induce same sort of role-performance as it did in the place of origin'. See, Robert B. Seidman, *Administrative law and Legitimacy in Anglophonic Africa- A Problem in Reception of Foreign Laws*; 5 Law & Soc'y. Rev. 161, 200-1 (1970)

¹⁴ Michale J. Perry, the Robert W. Woodruff Professor of Emory University School of Law, says: " Law of human rights is one thing, the morality of human rights, another. By the morality of human rights, I mean the morality that, according to the International Bill of Human Rights, is principal ground—the principal warrant for – the law of human rights." See on: "Human Rights as Law, Human Rights as Morality; Emory University School of Law, Public Law & Legal Theory Research Paper Series, Research paper No. 08-45 at 12 (This article can be downloaded from <http://ssrn.com/abstract=1274728>)

Laws failing to embody issues of economic, social and political development of the society, in general, fail to rest on the principal ground of 'legality'. The economic, social and political development is a right of individuals and legal as well as moral obligation of the State. The State's positive law to be rational requires human rights as 'fundamental norms for 'legitimacy as well as legality'. Rationalization of State's positive law is to affirm the principal value (respect to the inherent dignity of human beings) of human rights: that is to say that the State's positive law has to imperatively affirm that 'every human being has inherent dignity and that it is inviolable under any circumstance'.¹⁵

Poverty and deprivation are forms of latent violence and hence pose threat to human dignity.¹⁶ Economic, social and political development is hence an issue of human rights. The law of a society failing to embody economic, social and political development as human rights of individual fails to hold the 'sanctity of legality'. Human dignity is protected by economic, social and political development by offering adequate 'economic and social security' to every individual. Hence, the issue of economic and social security provides content to the law and also provides 'principal ground for its legality'.

Hence, the elements of human security, which constitute the ground for non-violability of human dignity, must find explicit expression in the 'words of positive laws'. This is what we call 'rationalization or internalization of human rights'. The laws of a society without human rights firmly articulated in it, is merely a body of rules to 'impose State's decisions on human beings' but not a body of 'rules to oblige the State to work for overall security of human beings and thus protect human dignity'. The law without impregnation of human security and dignity obviously lacks a notion of justice, and hence, becomes enforceable only for the unwanted desire of the State. It means that the laws of a society have to embody human rights values and norms for their legitimacy or legality. The rules of law hence, must serve the 'interests and justified claims of human beings'. Having legal structure and legal substances is not enough for law to protect

¹⁵ *Ibid*

¹⁶ To quote Dietrich Bonhoeffer is worthy at this point. In Germany during the World War II, he observed that "we have for once learned to see the greatest events of the world history from below, from perspective of outcast, the suspects, the maltreated, the powerless, the oppressed, the reviled—in short, from perspective of those who suffer" . See, Dietrich Bonhoeffer, 1995, *A Letter to Family and Conspirators in Geoffrey B. Kelly and F. Burton Selson, eds. Dietrich Bonhoeffer A testament of Freedom; Harper San-Fransisco, at 482-486*. Martin Luther King Jr. declared, in the same spirit, that man's inhumanity to man is not only perpetrated by vitriolic actions of those who are bad. It is also perpetrated by vitiating inactions of those who are good. Quoted in Nicholas D. Kristof "The American Witness", New York Time, March 2, 2005

human beings from 'injustice' or 'violation of human dignity'. Friedman, an American legal sociologist, has rightly said that lawyers have a tendency of confining their analyses to the structure and substance of the legal system. According to him, structures and substances are real components of a legal system, but they are not a working machine. The trouble with ... structure and substance was that they were static; they were like a still photograph of the legal system'.¹⁷ Legal culture refers to the attitudes, values and opinions held in society with regards to law, the legal system and its various parts.¹⁸ The development of a legal culture is an important role of the State in developing countries, especially in order to break the vicious cycle of regressive status quo.¹⁹ Legal culture can also be taken as a theory in itself which renders the legal system concerned with the economic and social problems facing the people, and hence makes meaningful efforts to serve the people by recognizing and protecting their justified claims. Modernization mission of legal system, however, does not epitomize the 'development of legal culture in itself'. The development of legal culture is a phenomenon of rationalization of laws by accepting the 'universal values of human rights, human security and dignity in particular'. Many developing nations have grotesquely failed in development of legal culture because of attempting to affect change in their legal system by importing laws from western nations. The borrowings of privatization laws during the post 1990 era in Nepal is an example,

¹⁷ Lawrence M. Friedman, 1975, *The Legal System: A Social Science Perspective*, p. 15

¹⁸ *Ibid* at 76. Also, Another scholar defines legal culture as : "a specific way in which values, practices and concepts are integrated into operation of legal institutions and interpretations of legal texts: attributed to John Bell by Mark van Hoecke & Mark Warrington, 1998, "Legal Cultures, Legal Paradigms and Legal Doctrines: Towards a Model for Comparative Law; 47 Int'L&Comp.L. Q. 495 (1998). These two definitions are somehow abstract. The legal system, in a developing country, is characterized by a 'minimum role in role in the society'. The larger part of the human relations in a developing society (country) is controlled by 'traditions' both pro-human rights and anti-human rights. The legal culture in the context of developing countries is a 'specific action of expanding the role of law in dealing with human relations in the society by absorbing the positive traditions and preventing the negative traditions'. The legal culture as a dynamic phenomenon is a means to break the 'grotesque cycle of regressive status quo and violation of human dignity- that is to say poverty and deprivation', including discrimination of all forms". See, Yubaraj Sangroula, 2010, *Jurisprudence: the Philosophy of Law*; Kathmandu School of Law (first edition), at Ch. 5

¹⁹ Significance of 'legal culture is that it is an essential intervening variable in the processes of producing legal stasis or change. See, Lawrence M. Friedman, 1997, at 33. Development of legal culture is essential to overcome the static position of law. In case of developing countries, the concept of legal culture is especially important. See, Volkmar Gessner, "Global Legal Interactions and Legal Cultures"; 7(2) *RATIO JURIS* 132, 134 (1994). The development of legal culture in developing countries is vital because developing countries often import from Western nations' legislation, codes or even entire legal system in their attempt to modernize their domestic legal frameworks. See, Franz von Benda-Beckmann, *Scape Goat and magic Charm: Law in development Theory and Practice*, 28 *J. OF LEGAL PLURALISM* 129 (1989)

which rendered poor people to compete with elites in economic development endeavors. The consequence was that the gap between rich and poor increased sharply.²⁰

Figuratively speaking, the concept of justice, representing moral aspect of human rights, legitimizes the system of law. Literally speaking, however, the concept of justice distributes benefits or advantages of development, by providing each individual with 'equity in resources to fulfill basic needs and opportunities for fair competition in participation of decision making process', to people.²¹ The role of justice at this point is thus paramount because it functions to generate a 'threshold condition' of human security, physical integrity, sustenance supplies, freedom of choice, acquisition of knowledge for life skills, and participation in economic activities. Justice in this sense is an indicator of the 'embodiment of paramount values of human rights concerning development leading to human security and dignity'. Hence, the laws of a progressively transforming society need to expressly recognize these benefits and advantages, and also oblige the State to protect such benefits and advantages by establishing concrete institutions and mechanisms to ensure enforcement expeditiously, impartially and reasonably. Human rights, values and norms²² are inherently imbibed in human capacity of acquiring knowledge and using the same for his/her transformation into a better situation; in human ability to process information and using outcomes thereof for enhanced knowledge and skills for productivity in life; and human capability of engendering mechanisms for continuity of changes without jeopardizing its collective positive impact on society at large. Human rights as

²⁰ For more detail on impacts of legal transplants: see Benny Simon Tabalujan, 2001

²¹ These two aspects of justice are being debated with nomenclature of intrinsic or instrumental conception of justice. Instrumental justice is a notion directly related to the 'application of justice system to alleviate poverty of mass'. The debate on this taxonomy of justice is becoming more spectacular by World Bank's attempt to define indicators of justice in connection with its programs about poverty reduction. The Measuring Justice Initiative, which attempts to quantify the performance of the Justice Sector in developing countries, is a part of greater trend in the bank to empirically measure normative standards. See, Galit A. Sarfaty, 2009. "Measuring Justice: Internal Conflict over World Bank's Empirical Approach to Human Rights" in Kamari Clarke & Mark Goodale (eds), *Mirrors of Justice: Law and Power in the Post-Cold Era*; Cambridge University Press.

²² Human rights values or norms refer to moral foundations on which human rights law has been founded on. They can be referred to as 'moral foundations human rights laws'. As pointed out by Michael J. Perry (*Human Rights as Morality – Human Rights as Law*: University of San Diego Law School, Legal Studies Research Paper series No. 08-079), the moral foundation of human rights, according to International Bill of Human Rights, consists of two connected claims: "The first of which is this: Each and every (born) human being has equal inherent dignity. To say that every human being has "inherent" dignity is to say that the fundamental dignity every human being possesses, she possesses not as a member of one or other group (racial, ethnic, national, or religious), not as a man or woman, not as someone who has done or achieved something and so on but simply as a human being. This is the second claim: The Inherent dignity of human beings has a normative force for us, in this sense: we should—everyone of us—live our lives in accord with the fact that every human being has inherent dignity; we should respect—the inherent dignity of every human being. There is another way to the second claim: Every human being is inviolable; not-to-be-violated".

moral values embody claims that every human being is inherently dignified by virtue of his/her birth as a human being and thus he/she is entitled to enjoy the dignity irrespective of differences he/she has in origin, status or circumstance. The human dignity is inviolable in any circumstances, and thus poverty and ensuing deprivation are not tolerable. Nation's laws should prevent poverty and deprivation by empowering individuals to assert the right to development.

Economic and social needs or benefits and advantages of individuals constitute the primary sources of values or norms guiding the 'meaningful operation of justice'. The outputs (equity based distribution of resources and opportunities for fair competition) generated by the operation of justice are carried out by rules of law in practice. The positive rules of law are instrumental in protecting and enforcing 'the values and norms recognized by the concept of justice'. This notion of justice as an equity based resource distribution system and as a tool of guaranteeing opportunity for fair competition along with formal positive rules of law 'provide normative ground or foundation for the principle of 'rule of law'. A political system that operates keeping these principles as cardinal norms is called democracy.²³

This thesis underscores the role of equity-based justice, economic and social development programs and progressive legal culture as coherently interacting components of the 'concept of rule of law'. The concept of rule of law²⁴ is neither a 'dogmatic belief that underscores a theory that strict observance of the rules of positive law, as outlined by the procedural rules, is the true essence of 'rule of law',²⁵ nor is it an indicator of measuring the justice. Concept of rule of law

²³ John Rawls concept of justice that 'opportunity and priority require a political equality as a primary good is founded on a notion of the supremacy of the civil and political rights, hence not applicable in the context of developing society.

²⁴ Literature about the relationship between human rights and rule of law is still largely cryptic. Even the most fundamental human rights instruments such as UDHR and ICCPR have failed to point out the relationship between the concept of human rights and rule of law. Rule of law, however, is essentially important for better enforcement of human rights. Human rights' enforcement requires a sound state of political stability, economic development and good governance, and they, in turn, require meticulous observance of the concept of rule of law. Sergio Vieira de Mello suggests, rule of law will be a "fruitful principle to guide us toward agreement and results" and "a touchstone for us for spreading the culture of human rights". See, Address of de Mello at the Closing Meeting of the 59th Session of the Commission on Human Rights, April 25, 2003 at <http://unhchr.ch/huricane/hurricane.nsf/0/997CB7D98CAB294C1256D16002B1276?opendocument> (last visited March 29th 2005)

²⁵ At its most basic, rule of law refers to a system in which law is able to impose meaningful restraints on State and individual members of ruling elite. The supremacy and equality of all before the law is the threshold of rule of law. Beyond this threshold requirement, concept of rule of law can be divided into general types, thin and thick. A thin conception stresses the formal or instrumental aspects of rule of law—those features that any legal system must possess to function effectively as a system of laws, regardless of whether the legal system is a part of a democratic society or non-democratic society, capitalist or socialist, liberal or theocratic (See, Joseph Raz, 1979, *Rule of Law and Its Virtue in the Authority of Law: Essays on law and Morality*). Moreover, laws must be reasonably acceptable

is rather an instrument of 'guiding the process of development of the progressive legal culture' that embody human rights and values as cardinal principles of promoting human security and dignity'. The relationship between human rights and rule of law is therefore indispensable for better enforcement of human rights instruments. Desired enforcement of human rights instruments requires political stability, economic development and good governance. A long list of economists, legal scholars and development agencies from Max Weber to Douglas North, as well as the World Bank, have argued that rule of law is necessary for sustained economic growth and functioning of democracy.²⁶ Though the human rights movement has significantly increased in size, the fault lines encountered by it are not less severe or trivial. The international human rights movement is facing many crises. The fault lines emerged out of the economic gap between developed Northern countries and developing Southern countries, attempts of some countries to define human rights to suit their cultural and economic contexts, deeply rooted disparity between men and women and men's dominance in policy making institutions, poses questions about western liberalism and capitalism and also; cultural differences across the world are posing serious obstruction to a universal theory on human rights. Rule of law can however address the fault lines²⁷ faced in theorizing a universal theory on human rights. As a component of rule of law, human rights laws and values are the 'indicators of justice in acts of the State and instrument of people to invoke 'human rights in the law made by the State and acts performed by the Government agencies'.

II. INTERNATIONAL POLITICS ON HUMAN RIGHTS AND PLIGHT OF POWERLESS PEOPLE

The international politics, the politics of developed countries in particular, on human rights has to some extent contributed to the prolongation of the state of acute poverty in many parts of the world today. The developed countries have persistently denied recognizing the 'justiciability'

to majority of the populace or people affected by the laws (Lone Fuller, 1977, *The Morality of Law*, p. 39). The thick conception, beginning with thin concept elements, incorporates of political morality and legitimacy.

²⁶ See, Randall Peerenboom, "Human Rights and Rule of Law: What is the Relationship? University of California Los Angeles School of Law, Public Law & Legal Theory Research Paper Series, Research Paper No, 05-31

²⁷ Islamic States from Egypt to Malaysia have endorsed rule of law. Asian Governments, including socialist regimes in China and Vietnam, have welcomed technical assistance aimed at improving the legal systems and implementing rule of law. Developing countries that emphasize right to development see rule of law as integral to development. Concept of rule of law that way has a prospect of becoming a milestone for institutionalization of human rights universally. See, Randall Peerenboom, "Human Rights and Rule of Law: What is the Relationship? University of California Los Angeles School of Law, Public Law & Legal Theory Research Paper Series, Research Paper No, 05-31

of economic, social and cultural rights. The 'problematic nature of economic and social rights' is not a justification for placing them on the periphery. Europe would not have to encounter problem of enforcement of such rights if the resource constraint was the only *raison d'être* for giving same status to these rights corresponding to civil and political rights.²⁸ The developed countries indeed have meticulously ignored the significance of economic and social rights.²⁹ One of fault lines of economic and social rights lies on issue of their justiciability. Conventionally, these rights are considered by developed nations as non-litigating rights. The excuses put forward by developed countries are copied by developing countries to skip their accountability of addressing looming poverty and deprivation in their jurisdictions. Countries like UK and USA still continue to question the value of a complaint and adjudication procedure for many aspects of economic and social rights on the basis of alleged 'vagueness' of those rights and the inappropriateness of interference with governments' decision about economic and social policy.³⁰ While this trend is now rejected by courts of many countries³¹ and regional bodies, including the African Commission on Human Rights,³² the Inter-American Commission on Human Rights,³³ the Inter-American Court of Human Rights,³⁴ the European Committee of

²⁸ The history has witnessed a biased attitude to economic and social rights from very early time of efforts for drafting International Bill of Human Rights. The European Social Charter (ECS), for instance, was adopted by the Council of Europe in 1961, a decade after European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in 1950. When the ECS was adopted, it was envisioned to provide the backbone and framework for the protection of fundamental economic and social rights in Europe. In the spirit of recognizing the indivisibility between civil and political rights and economic and social, the drafters of the ESC viewed it as the necessary counterpart to the rights protected under European Convention for the Protection of Human Rights and Fundamental Freedoms. In practice, however, ESC has been marginalized in the protection of economic and social rights, has failed to elevate its status equal footing with European Convention for Human Rights. See, Melissa Khemani, 2009, "Economic and Social Rights"; Georgetown Law Center ; Electronic copy available at <http://ssrn.com/abstract=1606110>

²⁹ Philip Alston has accurately described the position. He says, "ESC turned out to be the 'poor little step sister' of the ECHR". See, Philip Alston, 2005, *Assessing the Strengths and Weaknesses of the European Charter's Supervisory System*, Center for Human Rights and Global Justice, Working Paper, Economic, Social and Cultural Rights Series (NYU School of Law, No. 6 2005), 2-5.

³⁰ Aoife Nolan, et al. 2007, "The Justiciability of Social and Economic Rights: An Updated Appraisal", Human Rights Center, Queen's University Belfast; Electronic copy available at <http://ssrn.com/abstract=1434944>

³¹ Jurisdictions accepting justiciability of economic and social rights include, *inter alia*, South Africa, The Philippines, India, Bangladesh, Colombia, Finland, Kenya, Hungary, Switzerland, Argentina.

³² See, e.g. *Purohit and Moor v. Gambia*, Communication 241/200. Decided at 33rd ordinary Session of the African Commission, 15-29 May 2003 (dealing with the right to health of mental health patients); *SERAC and CESR v. Nigeria*, African Commission on Human Rights, Case No. 155/96, Decision made at 30th ordinary Session, Banjul, The Gambia, from 13th -27th October 2001 (dealing with the right to health and implied rights to food and housing).

³³ See e.g., *Argentina: Jehovah's Witness, Case 2137*, Inter-AM. C.H.R. 43, OEA/ser. L/V/II.47, doc 13 rev. 1 (1979) (Annual Report 1978) (dealing with the right to education; *Jorge Odir Miranda et al. v. El Salvador*, Inter-American Commission on Human Rights, Case 12.249, Report No. 29/01, OEA/Ser. L/V/II.111 Doc. 20 rev. at 284 (2000) (admissibility decision dealing with economic, social and cultural standards enshrined in OAS Charter).

Social Rights,³⁵ the European Court of Human Rights,³⁶ the recognition and protection of economic and social rights on a equal footing to civil and political rights suffers badly. Persistent denial of some powerful nations to give equal status to economic and social rights does implicitly suggest an attitude of denying the grotesque state of poverty crushing the lives of millions of people. This non-empathetic attitude of developed nations is reflective also from the recent discussions at the United Nations about the optional protocol to establish a complaints mechanism to the International Covenant on Economic, Social and Cultural Rights. Though a Working Group established to consider the optional protocol upon hearing from a number of experts suggested that economic and social rights now must be justiciable,³⁷ the issue has not been resolved yet. Developed powerful countries such as USA, UK, Canada and Australia are less favorable to the idea of an optional protocol. The draft of the protocol prepared by the *Working Group* is altered by such countries to ensure 'limitations on the scope and application' of a complaint procedure.³⁸ Rejection of the idea about comprehensive complaints procedure implies that the powerful countries as well as politicians across the world are not yet ready to 'accept the fact that deaths occurring due to hunger, lack of medicines and

³⁴ See e.g., *Cumindad Mayagna (Sumo) Awas Tingni v. Nicaragua*, Inter-American Court of Human Rights Series C, No. 79, 31 August 2001 (involving the right to property); *Delcia Yean and Violeta Bosica v. Dominican Republic*, Inter-American Commission on Human Rights, Report 28/01, Case 12. 189, 7 December, 2005 (involving the rights of child).

³⁵ *Autisme-Europe v. France*, Complaint No. 13/2002, 7 Nov. 2003, (dealing with the education rights of persons with autism); *FIDH v. France*, Complaint No. 14/2003, 8 Sept, 2004 (involving, *inter alia*, the right to medical assistance of non-nationals).

³⁶ For a list of decisions of regional bodies on economic and social rights: see, A. Nolan et al., 'Leading cases on Economic, Social and Cultural Rights: Summaries- Working Paper No. 2' (Geneva; COHRE, 2005), electronic copy available at www.cohre.org

³⁷ For additional information on progress in this regard; see, Report from the First Session of the Open Ended Working Group to consider options for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2004) E/CN.4/2004/44; Report of the Second Session, 2005. E/CN.4/2005/52.

³⁸ See the Human Rights Council's Resolution 2006/3, para 2(Available at http://www.ohchr.org/english/issues/escr/docs/res2006_3.pdf). Canada for, for instance, explained after the vote that it "continued to question the merits of a communications procedure for economic, social and cultural rights, and was concerned for the potential of undue interference by international body, and the absence of a clear definition for many economic, social and cultural rights as well as for clear criteria for judging compliance (UN Press Release, 'Action on Resolution on Working group on Optional protocol to the International Covenant on Economic, Social and Cultural Rights', 29 June 2006). After new mandate to the Working Group, the first meeting the group was held on 7 July, 2007. In this meeting, the support for the comprehensive complaints procedure was seen comparatively stronger. However, a significant number of nations, through their delegations, continued to argue in favor of a provision allowing for an 'ala carte' choice by states upon ratification as to which rights or aspects of rights the complaint procedure would cover. The US delegation argued that ICESCR, unlike the ICCPR, does not require states to provide legal remedies. In contrast, NGOs and states who favored the comprehensive optional protocol stressed that all social and economic rights, and all components of these rights, are subject to a requirement of effective remedies. The stand taken powerful countries was a serious backward step in terms of effective protection of International human rights.

shelters, are the most pressing issues of human rights. The security and dignity of poor people is still at stake. The argument that the judiciary should not interfere with government's choices on socio-economic matters and resource allocation implies that there will be nowhere for them to go for a hearing in relation to violations of these rights and that no institution will hold governments accountable for violating them.³⁹ The denial to agree on 'justiciability' of economic social rights can have the following implications:

- the continuity of regressive status quo in a society which forces millions people to live in poverty in grotesque inhuman conditions,
- governments have no accountability for corrupt practices and wrong policies of socio-economic development,
- making decisions about development policies and allocation of resources is a privilege of governments and political elites,
- the concept of good governance is limited in scope to political rights, and
- the concept of justice has no relevance with necessity of rescuing millions people from hardship of lives caused by poverty and deprivation.

The state of 'enforceability' of economic and social rights, as seen from the preceding discussion, is made weaker. By doing so, governments have failed to underline the importance of the principle that the commitment to enforce economic and social rights along with effective remedies in case of violation is an act of maintaining integrity of the Constitution's 'promise' for all members of society. The principle is vividly described by justice Yacoob of the South African Constitutional Court in his description of the plight of Irene Grootboom⁴⁰ and her family, living under plastic in the Wallacedene Sports Field. He notes: "The case brings home the harsh reality that the Constitution's promise of dignity and equality for all remains for many a distant dream".⁴¹ The issue of justiciability is thus not related only with remedies on violation of economic and social rights, but it is also related to the genuine claim of every individual human being of having the 'promises' made by the state and declared through the Constitution kept. It is a claim to assert the dignity and equality promised to him/her by the Constitution. If

³⁹ Aoife Nolan, et al. 2007, "The Justiciability of Social and Economic Rights: An Updated Appraisal", Human Rights Center, Queen's University Belfast; Electronic copy available at <http://ssrn.com/abstract=1434944>

⁴⁰ *South Africa v. Grootboom*, 2001 (1) SA 46 (CC) ('Grootboom')

⁴¹ See para 2, Yacoob J for the Court in *South Africa v. Grootboom*, 2001 (1) SA 46 (CC) ('Grootboom')

the issue of dignity and equality is an agenda of the Constitution, then government under what grounds can refuse 'judicial enforceability' of economic and social rights? One should not forget at this point that 'a State is created by the social contract of people, hence people are always sovereign. Through the contract, people have committed themselves to sacrifice their lives while defending their nations in the time of need. The State bears the reciprocal obligation to 'guarantee to fulfill basic needs of people' as and when necessary.

The 'generation theory of human rights' engendered by some jurists has produced disastrous impact in 'indivisibility theory of human rights'. The practice of dividing human rights between civil and political rights and economic and social rights with less emphasis to the later has pedantically politicized human rights to the acute disadvantage of the poor population of the world. This politics diligently deemphasizes the significance of economic and social rights and thus contributes towards dehumanization of lives of millions of poor people across the world. This unwanted politics, of keeping a significant size of the population under poverty and insecurity, negatively affects the process of legal development and sustainability of democracy. Dryness of attitude shown to economic, social and development rights by some powerful economically developed countries is indeed responsible for abject poverty confronted by millions of children, women and workers the world over today. "The adoption of rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society".⁴²

The generation theory of human rights is utterly unjustified.⁴³ It directly contests the significance and vitality of the 'indivisibility' theory of human rights.⁴⁴ To apply generational

⁴² This stamen was made by the Commission on Economic, Social and Cultural Rights (CESCR) in its General Comment (in 19th Session) No. 9 on the Domestic Application of the Covenant. See, U.N. Doc. E/C.12/1998/24 (1998) at para 10

⁴³ Human rights irrespective of their economic and social or civil or political contents overlap or cross cut with each other. Most importantly, the adequate enforcement of human rights is an interdependent phenomenon. The generation theory fails to understand this 'notion of human rights enforcement' paradigm. The European Human Rights court has thus adopted an approach of integrated enforcement. Case law jurisprudence on human rights established by European Human Rights holds that there is no watertight division between economic and social rights and civil and political rights. In a number of cases, the court has viewed that each treaty body significantly influence other in matter of enforcement. See, Ida Elisabeth Koch, 2006, Economic, Social and Cultural Rights as Components in Civil and Political Rights: A hermeneutic Perspective", *The International Journal of Human Rights*, Vol. 10, No 4, 405-430, December 2006.

theory in evolution of human rights is based on wrong analogy. It makes attempt to bring in human rights arena the generation theory of Strauss and Howe⁴⁵ that describes cycles in history divided into four phases, so-called turnings. They argue that within each turning a new generation is born, exhibiting a distinct collective persona and each generation is shaped by the mood and orientation of the turning in which it is raised and has important part to play in the whole cycle.⁴⁶ Generation is a term associated with 'pattern of succession' from one stage of history to the other by one age group to another.⁴⁷ Human rights as principal attributes of human dignity are not associated with 'such type of succession'. Human rights are universal terrestrially as well as temporally; human rights of all types were inherent to human beings in the past and so will remain in future. The so-called generation theory, which subordinately segregates economic and social rights from civil and political rights, is hence not only elusive but also detrimental to the development of an integrative approach⁴⁸ for enforcement of human rights.

Historically, the role of economic and social transformation in lives of human beings is imminent in formalization of civil and political rights. As a matter of fact, it would be sheer fallacy to attempt applying 'generation theory' to examine the evolution of human rights. Human rights collectively constitute' perfection, at least near perfection, of human personality, which is, otherwise, defined as human dignity. The generation theory was pedantically developed by some jurists to 'establish supremacy of civil and political rights and thereby justify the supremacy of liberal politics, and hence implicitly assist politicians to avoid accountability to 'omission to address grotesque inhumanity caused by poverty and deprivation'. The underlying

⁴⁴ As pointed out by Holmes and Sunstein, all rights are positive in the sense that they have budgetary implications. See, Stephen Holmes and Cass Sustein, 1999, *The Cost of Rights: Why liberty depends on Taxes*; W.W. Norton & Company, New York at Ch. 1

⁴⁵ "Generations" (ISBN 0-688-11912-3) is a book William Strauss and Neil Howe wrote to describe a cyclic theory based on repeating generational archetypes. The book had made attempt to examine the seasonal cycles of the Anglo-American history. According to this theory, just as history molds generations, so do generations mold history. Strauss and Howe describe four turnings of Anglo-American history, and in each turning a new generation is born, exhibiting a distinct collective person. They say, "As one turning gives way to the next, a society's mood shifts because the generations age from one phase of life to the next, building their unique perspectives and tendencies into their new social roles". For more details: See, "Generations" in http://en.wikipedia.org/wiki/Strauss-Howe_generations_theory

⁴⁶ *Ibid*

⁴⁷ *Id*

⁴⁸ Integrative approach of enforcement of human rights instruments takes 'indivisibility element' as a legal content, meaning that the two sets of rights can be coordinated or integrated into concrete decision making, even though they are enumerated in respective covenants. The European Human Rights Court is increasingly using this approach. For more on explanation of integrative approach: See, Ida Elisabeth Koch, 2006, *Economic, Social and Cultural Rights as Components in Civil and Political Rights: A hermeneutic Perspective*", *The International Journal of Human Rights*, Vol. 10, No 4, 405-430, December 2006.

purpose of the civil and political rights' precedence based-generation theory is to 'morally and legally' validate the supremacy of the 'liberal majoritarian politics'.⁴⁹ Economic and social rights are considered 'second in rank' because they are vague in definition and application'. This view is provoked by a group of states, which contradicts with the ground reality. Of course, every human being has a lasting love for his/her freedoms, which are protected by civil and political rights. Nonetheless, the significance of economic and social rights is equally great because an individual must first survive to enjoy civil and political rights. Hence, the division of rights into generation is nothing but a political hoax. In social science, like natural or pure science, concepts and theories do exist and are considered valid or invalid based on their 'properties of truth and relevance', but not on the ground 'in what era or period of history they were produced'.

The unjust and biased attitude of the developed countries and some scholars of human rights jurisprudence to economic and social rights have encouraged the governments of developing countries to float out an excuse of 'resource crises' to enforce economic and social rights. The excuse of 'resource crisis' is, however, merely a hoax. The real problem indeed lies in continuing a system of governance that lets off rulers from accountability to wrong policies, mal-distribution of resources, corruption and exclusion of majority from decision-making. The law in a developing society is an instrument of 'coercion or imposing interests of political elites over general population', hence the law in such a society is devoid of 'values and norms' of justice; that is to say that the equity based distribution of resources and access to opportunities for development as well as access to remedies against unequal treatment is restricted. It is worth elaborating the 'theory of source and output rights' jurisprudence at this juncture.

Basic needs are 'primary essentials' of human lives and are recognized so by fundamental human rights instruments by most Constitutions of democratic nations. The right to adequate

⁴⁹ "One who votes in a democratic procedure is expected to abide by the result even if their cause is defeated. They are in minority but the majority has the day. They must conform to the winning policy although they voted against it. They may be forced to comply with the decision of the majority. This is not tyranny; it is just defeat. Those who are defeated should look forward to their next opportunity for decision making. They may then find themselves in a majority, and depending on the issue at stake in the voting—a representative, a government, a specific policy—they may be able to reverse the decision which went against them on the first occasion. An important assumption behind the practice of majority decision-making is that 'You win some; you lose some'—Dudely Knowles, 2001, *Political Philosophy*; Routledge, London. This essence of 'liberal majoritarianism is what the final consequence of the protection of political rights. One has to critically understand that 'the formation of majority of obtaining decision-making power' by powerless is simply unthinkable. The liberal politics is thus an instrument of political elites. The economically and socially deprived can have no influence in 'politics' and stay quite back with almost no possibility of gaining majority. The purpose behind relegating 'economic and social rights' second in generation is nothing but a design to discreetly keep politics in hands of political elites.

standard of life, which includes right to food, water supply, housing, health, education and social security, is a basic input or milestone for 'human security and dignity. Rights offered to these basic needs are characterized as 'economic and social rights'. These rights need to be guaranteed by the State as basic needs of human beings. The legal systems of democratic State acquire content as well as legality from these rights. Indeed, no legal system can be oriented to 'development or perfection in disregard of these rights'. The fundamental objective of the legal system of any democratic nation is thus to secure a ground for 'enforcement of such rights'. Since these rights are essential both for contents and legality of the 'rules of law', they can be defined as 'source or input rights. The economic and social rights, along with freedom of choice and physical integrity, place every individual in 'a threshold condition'. The 'threshold condition', as explained by Thomas Pogge, stipulates that a person suffers a violation of human rights if he/he is prevented from enjoyment of basic goods.⁵⁰ The paramount role or significance of the source or input rights lies in acquisition of the 'threshold condition' of human rights enjoyment. The satisfaction of 'basic goods, i.e. adequate access to security of person, physical integrity, sustenance supplies, freedom of choice and actions, basic education and participation in economic entrepreneurship, is what literally constitutes the 'threshold condition'. Deprivation of the access to these basic goods amounts to a human rights violation.⁵¹ Hence, failure to underline the importance of economic and social rights or to deny justiciability of these rights amount to 'disregard of source or input rights'. The recognition of the overriding significance of economic and social rights not only secures the 'right to development' but also provides a ground for enjoyment of 'civil and political rights'. Individuals whose threshold rights are incomplete or ill-protected are placed in a less advantageous position. In such a situation, they suffer excessive exposure to violent crimes, suppressions by the State, and become unable to defend their dignity. They are unable to meet their basic socio-economic needs. These 'disadvantaged conditions' lead to negation of basic political liberties and leads to an

⁵⁰ Thomas Pogge has listed the basic goods constituting the 'Threshold Condition' of human rights enjoyment. He says: "Other, more elementary, basic goods are ... physical integrity, sustenance supplies, freedom of movement and actions, as well as basic education and economic participation". See Thomas Pogge, 2002, at 49. What Thomas Pogge implies here that the satisfaction of the right to life, liberty and security of person under Article 3 of the UDHR collectively constitute the 'threshold condition' of human rights. Thus, when enjoyment of basic needs meets the 'threshold condition', the door gets opened for enjoyment of human rights in comprehensive form. The 'threshold condition' prepares individuals psychologically, intellectually and materialistically competent to 'assert all those rights provided by international human rights laws', the enjoyment of participating in activities of state's decision making and governance being the most important one.

⁵¹ *Ibid* at 38.

abridgement of other civil and political liberties'. No need to hesitate in saying that 'civil and political rights are the 'yields of economic and social rights as threshold rights. The deaths and deprivation of millions of people across the world today is thus a 'violation of human rights'.⁵² The input or threshold right concept holds that 'the poverty is an outcome of human rights violation'⁵³ caused by 'wrong political decisions and policies'. The situation cannot be averted by people having no ability to participate in the political process.

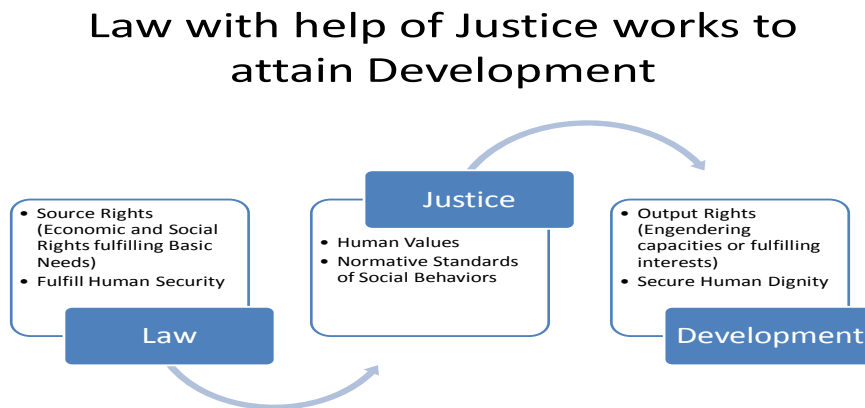
Justice as a concept embodying elements of 'physical integrity, security of person, sustenance supplies, freedoms of choice and action, access to basic education and economic participation' provides contents and measuring indicators for a system of law. These elements, in turn, embody moral and normative standards for legitimacy. A law cannot be justified being void of one or the other of these elements. Human dignity is a 'moral value or normative standard' cumulatively projected by these elements. To further enunciate, the internalization of 'basic needs' by the legal system' is justified by the need of 'protecting and promoting human dignity'. Hence, to say that economic and social rights are vague and not justiciable will imply that 'human dignity can be ignored or disregarded'. The human dignity as a value of justice renders the laws incorporating basic needs of human being grounded with full legal force as well as morally justified system. The human dignity as described by the oriental value system comprises of 'five qualities of human beings- free from want, free from diseases, free from exploitation, free from early death and free from violence'.⁵⁴ When the legal system of a society are able to adequately secure human dignity by way of 'recognizing and protecting basic needs', along with notion of justice rationalizing the same through normative values, it is supposed to correspondence with economic, social and political development of the given society. As an outcome the process, 'output rights' are activated. An individual at this stage acquires ability to

⁵² Source or Input rights (can be said threshold rights) contribute to build capabilities or abilities to assert other human rights, political rights in specific. They provide individuals with 'right' to have rights. Development and input rights support each other to 'justify each other's rationality and element of justice'. Indeed, they form an interface and their interplay encourages greater participation of people in 'public affairs', thus strengthening the prospect of a participatory democracy. On role of threshold rights to build capabilities of individuals; see, Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press, 2000, pp. 96-101 and Amratya Sen, "Elements for a Theory of Human Rights", *Philosophy & Public Affairs* 32 (2004) 315-56

⁵³ It would be sheer fallacy to believe that 'people are poor so their human rights are violated'. Human rights violation is a state which enshrines infliction on one by others. It means that the violation of human rights is not something we do to ourselves, but others do to us. This view of the nature of human rights violation is grounded on J.S. Mills' Harm Theory. See, Thom Brooks, "Is Global Poverty a Crime", p. 5. Available online at <http://ssrn.org/abstract>, last visited October 29, 2011.

⁵⁴ See Yubaraj Sangroula 2010

exercise his/her rights to participate in the decision making process. These rights in human rights language are called 'civil and political rights'. The source rights operate to empower individuals economically and socially whereas the output rights are active to control State's tyranny or acts against rule of law. Economic and social rights are 'inherent advantages' endowed to human personality. They offer 'security' to every individual against want, diseases, violence, exploitation and untimely ending of life. The output rights on the other hands are 'capacities' of individuals to assert claims, powers, privileges and immunities that engender an independent personality of every individual. Source rights along with output rights 'secure' human dignity.



The beneficiary of the right to development is, first and foremost, the individual. But no individual can simply wait until he/she has developed; the individual also has right to opportunities to develop. That is to say that 'every individual has right to have rights'. The responsibility to make such is fully guaranteed to every individual: States have a responsibility for creation of national and international conditions favorable to the realization of the right to development.⁵⁵ On the international level, this means that 'States have the duty to take steps individually and collectively, to formulate international development policies with a view of facilitating the full realization of the right to development.'⁵⁶ And on the national level, it means that 'States should undertake all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic

⁵⁵ Article 3(1) of the *Declaration of the Right to Development*, 1986

⁵⁶ Article 4(1), Article 4(2) and Article 3(3) *Ibid*

resources, education, health services, food, housing, employment and the fair distribution of income'.⁵⁷

III. UN EFFORTS TO INSTITUTIONALIZE THE RIGHT TO DEVELOPMENT AND POLITICS

The economic and social wellbeing of people is a major agenda of economic, social and political development, as it is so pointed out by the UN *Declaration of the Rights on Development*. However, the right to economic and social wellbeing of people has historically become the victim of political division of the west and east and socialist and capitalist countries. The issue of economic and social progress of human beings was raised for the first time by some less powerful countries as an indispensable element of human rights at the San Francisco Conference, 1945. The discussion at the Conference had adequately reflected on the necessity of 'economic progress of the people all over the world' as a precondition for peace and democracy. Norway, for instance, had put forward the following proposal:

*"In any new world order the great powers will have to shoulder the main burden of providing the military and material means from maintaining peace, and we are prepared to grant them an international status corresponding to their responsibility and power. But at the same time, we have a strong feeling that also moral standards should be taken into account... To defend life, liberty, independence, and religious freedom to preserve human rights... It is obvious that lasting peace must be based on economic progress and social justice... It must be one of the main tasks of the new International Organizations to secure an increasingly higher standards of living and social security for all".*⁵⁸

This proposal specifically highlighted the importance of economic development and social justice as the bed rock of peace and sustainable human rights protection. Bolivia had added a proposal demanding that the Economic and Social Council of the United Nations be mandated:

"to achieve concerted action to promote the economic development, the industrialization, and the raising of the standard of living of less favored nations as well as the protection of the international rights of man, the perfecting of social security and the provision of the material

⁵⁷ Article 8(1), See also Article 2(3)

⁵⁸ Document of the United Nations Conference on International Organization, (UNCIO) San Francisco 1945, Vol. 1, p. 554. See also vol.3, p. 355, 366 and vol. 6, p. 430-432.

opportunities for work, the solution of problems of health and population and others of a similar nature”.⁵⁹

This proposal sounded quite ambitious, but for many States it was not enough. Some countries went further to put proposal in this regard. Argentina, for instance, insisted for equal access to capital goods,⁶⁰ and France argued for fair distributions of raw materials as part of the Economic and Social Council’s mandate.⁶¹ These proposals were however rejected and in their place Article 55 of the Charter was devised. The San Francisco Conference failed to properly address the necessity of emphasizing the ‘economic development and social security of people across the world’. Article 55 and 56 emerged to be the only ‘instruments’ in the Charter to directly deal with the role of the UN in economic and social development of the world population. The major reason behind this limited attention of the UN to the economic and social development was that the founders of the United Nations at San Francisco conference were the most influential countries and most of them had economies already developed. The matter of economic development thus could not be an issue of priority of debate for them. They were thus virtually guided by a misconception that what they were making the UN was ‘an institution for collective security’ but not an institution which could take responsibility for the economic development and social security of the poor people of the world.⁶² Most importantly, the United States of America was very much opposed to any language about social/economic rights from the very beginning, seeing it as an opening for socialism.⁶³ It was this politics that stood as a stumbling block for inclusion of economic and social rights as equally important human rights. In subsequent days, the attitude of the developed countries to economic and social development agenda became further antagonistic. These rights were considered as ‘offshoots’ of the socialist or communist ideology, thus apt to be rejected at any cost. It was a grave injustice of the developed countries to the poor people of world.

⁵⁹ UNCIO, vol.3 at 586.

⁶⁰ UNCIO vol.10, at 84.

⁶¹ UNCIO vol.3, at 388.

⁶² Much of the world was still colonized. Western colonial States were not sincere to the people of the colonized world. They did not treat the people of the colonized parts as ‘equal to that of developed countries’. The sorrow and problems faced by the people of colonized countries were not taken as violation of human rights as such people were not defined as ‘civilized people’. See for detail discourse, Schirijver, van Genugten, Homan, de Waart, 2006, *The United Nations of the Future: Globalization with a Human Face*. Amsterdam: KIT Publishers, at 89.

⁶³ Otto Spijkers, “Human Rights and development from an international, Dutch and personal perspective”. See online at Social Science Research Network URL <http://papers.ssrn.com>

The said mindset of the developed countries was against the spirit and letters even of Article 55 of the UN Charter, the only alternative guarantee to economic and social development enshrined into the UN Charter. Normatively, the Article, with a view to the necessity of creating stability and wellbeing on which peaceful and friendly relations of nations is rested, requires United Nations to promote (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health and related problems; (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. While the State parties under Article 56 of the Charter have undertaken obligation to respect the provisions set forth in Article 55, in practice subsequent they presented a sharp opposite attitude to rights of people concerning economic and social progress.

Amidst this politics was engendered a theory of 'generation of human rights' significantly devaluing the importance of economic and social rights. The impact of the theory is so wide that the significance of economic and social rights is often ignored even by the UN. This is apparent in the UN Millennium Development Goals (MDGs) as well; as it fails to underpin human rights values in those development programs. Conceivably, it can be argued that even the UN has been influenced by the contemporary political theory that 'human rights and development' are two different concepts or entities. Spectacularly, the UN paid less attention to human rights while designing, developing and implementing the MDGs.

The consequence of the politics of divisibility of human rights and generation theory was costly; the governments from developing countries never considered themselves accountable for the devastation being continuously faced by human lives due to phenomenal poverty and deprivation. The developed countries, on the other hand, overtly rejected to take responsibility to reduce the cost on defense and armaments and to divert the same to address the crisis of poverty in the developing countries. Poverty thus continued as if it was a 'usual phenomenon' having no connection to human rights at all. The politics of 'rejecting the right to development as a human right' prompted by the inhuman face of capitalism⁶⁴ is thus largely responsible for continuity of massive violation of human rights in developing countries.

⁶⁴ Does the international community today acknowledge the universal right to development? The answer is bound to be skeptical. While the *Declaration on the Right to Development*, 1986, referring to the binding law such as ICCPR and ICESCR, has stated that right to development is inalienable human rights, the ground for skepticism looms large. When the Declaration on the Right to Development was adopted, the United States of America did cast

Nonetheless, some developments have followed recently in this regard. It seems that the realization that poverty and deprivation is a grave violation of human rights is increasing. The UN *Declaration on the Right to Development* is the most visible example of this development. More recently, the *Millennium Declaration* (2000) was unanimously adopted by the UN through a largest-ever gathering of world leaders (189 member-states, most of them represented by heads of State and Government).⁶⁵ In the declaration, they pledged to effectively work to free fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected to. It included a promise to make the right to development a reality for everyone and to liberate the entire human race from want.⁶⁶

The *Millennium Development Goals* are the concrete targets accompanying this general pledge.⁶⁷ While the language of human rights could be specifically used,⁶⁸ it can be assumed that human rights and development are closely linked and thus MDGs are not fully dry of human rights notions. However, to approach development from the perspective of legally binding human rights is not an approach accepted by it. Unfortunately enough, two years after the declaration of the MDGs, the US Government made a very controversial reservation to the declaration on food made during the World Food Summit held in Rome on 10-13 June 2002.⁶⁹ It viewed that the attainment of the right to an adequate standard of living is a goal or aspiration

a negative vote (For a discussion on the US position on the Declaration on the Right to development See Marks, "The Human Rights to Development: Between Rhetoric and Reality in *Harvard Human Rights Journal*, Vol. 17, at 137-168). Other eight countries abstained. They were Denmark, Finland, The Federal Republic of Germany, Iceland, Israel, Japan, and the United Kingdom.

⁶⁵ United Nation Millennium Declaration, resolution adopted by the United Nations General Assembly, 18 September 2000. UN DOC. A/RES/55/2 UN Press Release, 'World Leaders adopt 'United Nations Millennium Declaration' at conclusion of Extraordinary Three-Day Summit, 8 September 2000, UN DOC. GA/9758

⁶⁶ *Millennium Declaration*, at para 11

⁶⁷ Although these goals are not legally binding, Alston has argued that most of the goals reflect customary international law. He states that 'at least some of the MDGs reflect norms of customary international law... it can be observed that the case would be the most easily made in relation to the first six of the Goals, and parts at least of the Seventh would be also a strong candidates. See at Alston, 'Ships Passing in the Night: The Current State of Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals' in the *Human Rights Quarterly*, Vol. 27 (2005), no. 3

⁶⁸ For an interesting paper on a human rights perspective on the Millennium Development Goals (and a criticism of the fact that human rights did not figure prominently in these goals), see Alston, "A Human Rights Perspective on the Millennium Goals, paper written in 2004, as advice for the Millennium Projects Task Force on Poverty and Economic Development.

⁶⁹ For the Original Summit see, <http://www.fao.org/wfs> and for the follow-up conferences, see <http://www.fao.org/Worldfoodsummit>

to be realized progressively so that does not give rise to any international obligation.⁷⁰ This argument is not only deceptive to international cooperation and obligation of the developed countries to address the problem of poverty.

This is how anti-humanity international politics has played a very crucial role to perpetuate the state of hunger in the world. The grotesque state of deprivation that millions of people are subjected to live in is, to a large extent, an 'outcome of the attitude of the developed countries to neglect the responsibility of dealing with the crisis of poverty facing the poor people of the world'. While they have been interested to invest huge resources for 'armament and military' build-up, they are simultaneously arguing that 'the right to food incurs no international obligation'. As a matter of fact, in the South Asian region and in many other parts of the world as well, the frequencies of the types of stories as described at the outset are bound to occur phenomenally. The instances mentioned in there are only 'few representative incidents out of millions happening every single day'. These incidents are with no doubt an utter violation of human rights ostensibly committed by States through pursuing a 'wrong or erroneous theory of divisibility of human rights which is basically prompted by an idea of discarding the economic and social rights as human rights'.

IV. SOUTH ASIAN SCENARIO OF CONSEQUENCE OF INTERPLAY OF HUMAN RIGHTS VIOLATION, DEPRIVATION OF ACCESS TO DEVELOPMENT OPPORTUNITIES AND ILL-POLITICS AND GOVERNANCE

This part of the discourse deals with actual scenarios of the poverty, deprivation and human rights in South Asia, and their effects on institutionalization of democracy in the South Asian nations. The discourse envisions to disprove the argument that 'resource unavailability is making trouble in enforcement of economic and social rights' in South Asian countries. In fact, it is an anti-poor human rights politics of the powerful countries and unaccountable

⁷⁰ The reservation can be found in Part One of the Report of the World Food Summit: five years later, Rome 10-13 June 2002, p. 32. It reads" "The United states wishes to attach the following reservation to the Declaration of the World Food Summit... The United States believes that the issue of adequate food can only be viewed in the context of the right to a standard of living adequate for health and well-being as set forth in the Universal Declaration of Human Rights, which includes the opportunity to secure food, clothing, housing, medical care and necessary social services. Further, the United States believes that the attainment of the right to an adequate standard of living is a goal or aspiration to be realized progressively that does not give rise to any international obligation or any domestic legal entitlement, and does not diminish the responsibilities of national governments towards their citizens".

governments of the developing countries that cause grotesque violation of human rights across the world. The discussion below will exemplify the statement. This part of the discourse will implicitly plead for concentrating on 'securing good or progressive governance system' for rescuing huge population of people from state poverty and deprivation, and hence to protect human rights.

**V. PERCEIVED THREAT OF NATIONAL SECURITY, INCREASED MILITARY SPENDING,
RAMPANT BUREAUCRATIC AND POLITICAL CORRUPTION AND IMPACTS ON HUMAN
DEVELOPMENT AND SECURITY**

The main source of the mammoth poverty⁷¹ and deprivation, violence accompanied by massive violation of human rights across the world lies on States' incessant quest for power, militarization and political supremacy. Even the era following the cold war has made no spectacular improvement in this regard. The immensely amplified globalization has resulted in increasing control of international economic order resulting in massive price hike and unbelievably extended consumerism.⁷² Both of these phenomena have made the lives of poor people further deplorable.⁷³ The drive of mobilizing scarce resources to boost up militarization

⁷¹ Poverty is defined as denial of opportunities and fulfillment of human potential. Poverty and inequality are closely related. The trends across the world show that inequality is rising worldwide in recent decades at both national and international level. More than 80 percent of the world population lives in countries where income differentials are widening. According to the United Nations Development Program, the poorest 40 percent of the world population account for only 5 percent of global income. On the other hand, the richest 20 percent account for 75 percent of the world income. The scenario presents a gloomy picture of the modern international economic order. The end of colonialism and imperialism fared no good for the poor population and poor countries. Failure to deeply realize the 'human dignity and security' of poor population is the major cause of poverty worldwide. According to most recent estimates of the Food and Agriculture Organization of the United Nations, 2009, the number of hungry people worldwide has reached 963 million, or roughly 15 percent of the world population. It is an increment by 142 million over the figure of 1990-92. See, *Economic Survey, 2009-10; Pakistan*, at Ch. 9

⁷² Globalization in recent times has occurred as 'irreversible phenomenon'. It has both the challenges and prospects for developing countries. It may, as argued by Mahbub ul Haq in a brainstorming session of UNDP in 1998, help developing countries to gain if they are able to accelerate their human development, good governance and investment on infrastructure. He said, "If globalization was superimposed on a poorly-educated and poorly-trained labor force with poor system of governance and infrastructure, it would not lead to growth nor reduce poverty". See, *Human Development in South Asia: Globalization and Development*, The Mahbub ul Haq Human Development Center, Pakistan; Oxford University Press.

⁷³ As reported by Human Development in South Asia: Globalization and Development, (2001), the globalization has a very negative impact on lives of poor population. With intensifying globalization trend in South Asia, half a billion people have experienced a decline in their incomes. The benefits of economic growth that did take place were limited to a small minority of educated urban population. While the globalization driven investment is eventually expected to cause rise on income of all population, the transition is painful and devastating to poor population. The management of globalization in developing countries is thus a challenge in itself. The human development and economic development cannot be separated, if the advantages of the globalization have to reach

and national or regional security systems has been intensified even after the cessation of so-called cold war. Since September 11 (2001), the world has seen a dramatic change in the attitudes of the USA and its allies with regard to 'military or weapon-based security spectrum'. The massive scale of terrorist attacks and ensuing fear and insecurity in its aftermath, the emergency measures taken to prevent similar incidents in future and restrictions on freedoms allegedly to deal with the threat of terrorism and the global economic recession have collectively posed a great uncertainty about the future. These negative developments have diverted larger part of the resources to military and security build-ups, and have adversely affected the prospects of changes in the lives of the poor people of the world. Bertrand Ramcharan rightly says, "In all probability the plight of the developing countries has worsened and risk of internal conflicts has heightened".⁷⁴ Both their development and freedom have been threatened, the linkage of which is indispensable for progress of the human society.⁷⁵ The global military and security expenditure has sharply increased and the accessibility of the world poor population to basic needs has declined. The seeming development obstruction has posed increased threats to human dignity and security of the 'mammoth poor population across the world'.

The global institutional order is one of major causes for 'continuity of the deaths of millions of people by poverty'. The global institutional order allows for inequality among people from developed and developing countries. As pointed out by Thomas Pogge, there are at least three sources of the international institutional order that engender poverty and inequality among people. The first source consists of 'international economic bodies, such as the the World Trade Organization, which has enabled the exacerbation of deaths from global poverty through monetary agreements that favor affluent States at the cost of poor States'.⁷⁶ The second source is protectionist exemptions insisted upon by affluent States which have 'had a huge impact on employment, incomes, economic growth, and tax revenues in the developing countries where

the poor population. Unfortunately, the larger part of the resources in developing countries is going not to the 'human development sector', hence depriving the massive poor population from benefits of the economic growth.

⁷⁴ 2002, *Human Rights and Human Security*; International Studies in Human Rights Vol. 70: Kluwer Law Internationa, at 1

⁷⁵ In his important work, Prof. Amratya Sen has coherently presented the linkages between freedom and development. Derogation of one will automatically affect the posture of other. This theory in the present world order has been plausibly established. No democracy can thrive in absentia of development and no development can be meaningful until and unless the poverty engulfing the massive population is addressed. For further discussion see Amratya Sen, 1999, *Development as Freedom*; Oxford University Press.

⁷⁶ Thomas Pogge, 2002, at 19

many live in the brink of a starvation.⁷⁷ The third source concerns with 'international resource privilege' whereby dictator of the developing countries sell large swathes of national resources and incur foreboding debts, enhancing themselves at the great expenses of the welfare of the people.⁷⁸ Beyond these three sources, a newly identified source is 'culture of over-expenditure in luxury of managers, consultants and experts ' by projects supported by the bilateral or multi-lateral bodies. The high-cost lifestyle of expatriates is copied by the rulers, and managers of the national bodies. This culture robs huge nascent resources, which otherwise could be used for people's basic needs.⁷⁹ In these ways, the global international order contributes to the global poverty, and hence violation of human rights.

The south Asian region presents the gloomiest picture of human development situation, poverty, poverty related human miseries, and safeguard for human rights. The problem of internal conflicts, grotesque poverty and degrading state of political accountability are casting lives of millions of people in a state of chaos. The South Asian nations, by contrast to the painful scenario of human rights violation, poverty and deprivation, are increasingly engaged in building military and weaponry-based 'national security system' and are flushing increasingly huge amount of financial resource⁸⁰ to sustain their military outfits.⁸¹ While millions of poor

⁷⁷ *Ibid* at 18

⁷⁸ *Id* at 113-14

⁷⁹ Nepal is a glaring example. After 1990, the bilateral and multi-lateral international agencies brought a culture of 'lavish life style for expatriate managers, consultants and experts'. The expensive cars, offices and high salary used by international agencies were attractive. The international aids included such luxuries too. Gradually, the luxury was transplanted by national government agencies and non-governmental agencies. This is infamously known as 'Pajero' culture in Nepal. As of now, the culture has been transformed into a 'system of legitimized avarice'. Each Prime Minister, when retired, takes the 'sophisticated car' with him. This culture has not only increased the 'Governmental expenditure' but encouraged 'corruption'.

⁸⁰ The defense spending in South Asia is painfully astounding. Even smaller members of South Asian region like Nepal and Sri-Lanka spend huge amount of revenues for sustaining their military outfits. Nepal spends 1.6% of gross domestic products (GDP) in military spending, whereas the economic growth has barely kept pace with its expanding population. With GDP per capita less than \$245, Nepal is economically one of the poorest countries. In 10 years from 1996, Nepal's army increased from 46000 to 96000. A whole new institution called Armed Police Force was also created. Nepal defense budget has reached to 14 billion rupees. Whereas Nepal Needs 50,000 additional primary schools to educate its children, why Nepal has to keep this 96000 army even after the Maoist conflict has come to an end is an open question (See Kul Chandra Gautam " Arms Down ! For Shared Security" in The Rising Nepal, 2010-08-19-visited on 17-10-2010). On the other hand, Sri-Lanka, another smaller member of the region, has the largest defense budget in South Asia in percentage term. In November 2008, president Rajapaksa promised to raise defense spending by seven percentage to a record \$1.6 billion in 2009 (See Darini Rajasingham Senanayake, 2009. "Win the War and Lose the Peace: Sri-Lanka's War on Terror", Institute of South Asian Studies (ISAS), National University of Singapore: Website www.isas.nus.edu.sg- visited on 17-10-2010). The defense budget of India and Pakistan is of course scary. The Indian defense budget in 2010-11 has been swollen to 31.9 billion, a 3.98% increase in budget of 2009-10. The share of the defense budget in GDP is 2.30 percent, and the share of the defense budget in the union government's expenditure is 13.88 percent (See Lexaman Behara, "Budgeting for India's Defense: An Analysis of Defense Budget 2010-11"; March 3, 2010. Institute for Defense

people in South Asia are dying due to starvation and lack of basic medicines,⁸² the South Asian nations have already mastered manufacturing superb armament and military technological competence including the one to 'manufacture sophisticated long range missiles' with overwhelming capacity to hit targets at so far distance that are generally beyond the imagination

Analysis, IDSA-visited on 17-10-2010). While Pakistan's economy is in shambles due to mounting terrorism and unprecedented flood, the defense budget is tremendously increased. In 2009-10, Pakistan's revised defense budget was Rs. 343 billion which the Government decided to increase by 31 percent- Rs.448 billions (5.3 billion USD) in 2010-11 (See. "Pakistan to Raise defense budget by 31 percent in 2010-11: People Daily China Online, 22 May, 2010-visited 17-10-2010).

⁸¹ The army expenditure in South Asia is huge. Arguably huge quantum of scarce financial resource is spent for defense buildup in disregard of a huge size of population is starved and forced to die in lack of food and medicine. Even a small and least developed country like Nepal has been maintaining a military outfit having approximately one hundred thousand personnel despite a clear knowledge that it is strategically no feasible for it to defend its territory by military capability in the face of mammoth forces of India and China. India and Pakistan in South Asia are two countries having largest military outfits in the world. The Indian Army consists of 1,300,000 personnel in active service, 1,200,000 reserve troops, and 200,000 territorial forces. The Pakistan Army has an active force of 620,000 and 528,000 reservists. It has 150,000 para-military troops. These weaponries possessed by these countries are extremely sophisticated and expensive. In 1996 India signed, for instance, an agreement with Russia for the purchase of 90 Su 30 Mk-1 multi-role fighter-bombers. In 2004 a multi-billion license was signed for building additional 140. 240 Su30-Mk-1s. Moreover, 51 Mirage-2000, 60 Mig-29's, 250 old Mig-21's 47 Jaguars and 70 Mig-27's for ground attack are in service, which in total cost billions of dollar. Similarly, Pakistan Air Force has 200 rebuilt Mirage- 3's and Mirage-5's. Additionally, it has 42 F-16's, 150 F-7's. Manufacture of 150 JF 17 Thunder fighters is undertaken by the Pakistan Aeronautical Complex. An order has been placed with China for the purchase of 36 JF-10. These machines are self evident as to how huge scarce resource, which otherwise could be used to save the life of rural poor people, is consumed by the so-called perceived defense threat. Do the South Asian Governments are concerned to their nations for the welfare of people for building a supremacy is a open question for debate. For additional information on South Asian defense outfit, See "Military Balance in South Asia" in South Asia Investor Review, Thursday, January 5, 2009 (URL: <http://southasianinvestor.blogspot.com/2009/01/military-balance-in-south-asia.html>)

⁸² South Asia has 23% of the world's population and 43% of the world's poor and undernourished people with low life expectancy, low literacy rate and higher degree of gender discrimination and associated death and violence. While India and Pakistan in South Asia have attained a nuclear capacity to for war and their defense, the poor and undernourished population is implausibly huge. Though the number of people below the poverty line may have come down due to robust economic growth in India the life of millions of people is still in a peril. As studies have shown, 79% of unorganized workers, 88% of Schedule Caste and Schedule Tribes, 80% of Backward Population and 84% of Muslims belong to the poor and vulnerable group. Despite high economic growth rate, they have remained poor at a bare subsistence level without any social security, working in the most miserable unhygienic and vulnerable conditions. These poor and vulnerable categories of people are forced to survive on less than Rs. 20.30 per capita per day, which is twice the poverty line or less (See, "India-75% of Indians are poor and vulnerable" in SAAPE Bulletin: A Bulletin of South Asia Alliance for Poverty Eradication, October, 2007: Produced and published by SAAPE Secretariat, Kathmandu. Website- www.saaape.org.np and Vikas Adhyayan Kendra, Mumbai. Website -www.vakindia.org : visited on 17-10.2010). As per the report of World Bank's report (Poverty Reduction in Asia), the headcount poverty rate in Nepal is 31 percent. As reported by International Development Research Center (IDRC), in Bangladesh 46.8 percent people live under poverty. Even the recent economic growth in Bangladesh has not led to a major fall in poverty, least of all in rural areas. A 2008 report of Overseas Development Institute (see at www.odi.org.uk), in its 2008 project briefing, reports that around 40% people live in poverty in Bangladesh, of which 25% people are classified by the Government of Bangladesh as extreme poor and as such are rarely able to take advantage of the productive opportunities emerging from economic growth. However, Bangladesh still spends 1.1% of its GDP in defense spending (Source, World Bank, World Indicators). As per 2007 statistics, South Asia spends 31 756.7 millions for military purposes, of 81% falls with India alone.

of ordinary human beings.⁸³ Unfortunately, along with the mounting military capacity and spilling over modern military weapons, the South Asia continues to remain the most impoverished part of the world in terms of income as well as human development indicators, such as health and education. The largest absolute number of poor in the world, live in South Asia.⁸⁴ The missiles projects along with other military needs consume a huge amount of 'scarce revenues' which otherwise could be used for human development and basic needs of people such as sustenance, medical care and many other essential services that are necessary for a dignified life. The diversion of resources to the 'so-called national security' and unproductive sectors such as manufacturing of weapons has seemingly affected the progress in human development by attaining the MDGs.⁸⁵ The South Asian perspective of human rights and poverty alleviation is marred by the 'unwanted nexus of instable politics, corrupt and hypocritical governance systems and military adventurism'. Human rights of people are the worst victims of this nexus.

With no doubt, South Asia holds more enterprises and investment of financial resources to produce weapons and explosive powders than pharmaceuticals.⁸⁶ Much more funds are spent in order to 'prepare armed recruits' than to 'produce doctors'. The number of women and girl children condemned to trafficking and other forms of sexual violence, and maternity related death is quite larger to those of who are fortunate to graduates from universities".⁸⁷

⁸³ India has about one hundred nuclear armed ballistic missiles (Agni-I and Agni-II), and Brahmos the new supersonic cruise missile. The ballistic missile inventory of Pakistani army is equally lethal. It comprises Ghauri III and Shaheen III and several other medium range ones. All the ballistic missiles can carry nuclear warheads. The Babur Cruise missile is the new addition to Pakistan's weapon inventory. India and Pakistan possess almost same number of ballistic missiles and warheads. These nuclear weapons and destroy the entire population of South Asia (See "Military Balance in South Asia" in South Asia Investor Review, January 15, 2009).

⁸⁴ Human Development Report: Poverty and South Asia, 2006; The Mahabub ul Haq Human Development Center; Oxford University Press, at 2

⁸⁵ Less than five mortality rate has declined from 130 deaths per 1000 live births in 1990 to 94 in 2004. The current is not going to meet the targeted goal by 2015. South Asia represents the second highest under five mortality rate in the world. While under five mortality rate declined by more than 50 percent in Nepal, Bangladesh and Sri-Lanka, Pakistan and India, nations with most sophisticated military outfits and weapons, could lower it only by 28 percent (in 2004). South Asia has the second highest maternal mortality ratio in the world and is unlikely to meet the MDG target in this regard. Despite low level of HIV prevalence, South Asia is a high risk region due to high levels of poverty, low literacy and poor awareness levels. Around one in four TB cases occur in South Asia and the growing threat of HIV/AIDS is likely to increase the number. See, *Human Development Report: Poverty and South Asia, 2006*; The Mahabub ul Haq Human Development Center; Oxford University Press, at 2

⁸⁶ The poor state of MDG on health is example. South Asia is unlikely to achieve this goal by 2015. See at *Human Development Report: Poverty and South Asia, 2006*; The Mahabub ul Haq Human Development Center; Oxford University Press.

⁸⁷ South Asia shares 22 percent of the world population, whereas it bears the burden of 43 percent of world poor population. In South Asia, 437 million people live below US \$ 1 a day, while three-fourth of the population

The people of South Asia are compelled to live in a state of paradox. While South Asia, as many other parts of the world, are crawling forward with its slow economic growth rate and human development indices, the governments of South Asia are gruesomely competing for supremacy in building military strength and armament. As noted by Stockholm International Peace Research Institute (SIPRI-2009)⁸⁸, the military expenditure in South Asia has increased by 3.3 percent in 2008, in real terms to a total of \$ 37.3 billion. It also notes that the Indian military spending-which increased in 2008 by 5 percent (in real terms to \$ 30 billion)-dominates both the total and the trends of the region.⁸⁹ Over the 10- year period, 1999-2009, the South Asian military expenditure has increased by 45 percent; Sri-Lanka at the rate of 7.7 percent is in lead. The increment related with the mission of dealing with the problem of *Tamil Eelem* separatist movement⁹⁰, the trend has, however, not gone down even after the defeat of the 'Tigers'. None of the countries in South Asia have in fact reduced the military spending despite urgent need of diverting the available resources to human welfare and development projects. Few more examples will make it clear that 'the prevailing trends are not in favor of poverty eradication' and cut-down of defense budget in South Asia.

The defense expenses in Bangladesh, for instance, constitute the eighth largest sector of public spending. It is bigger than transport and communication, health or public order of security.⁹¹ By contrast, South Asia spends only 4.89 to 5.85 percent of GDP in the health

survives below US \$ 2 a day. Nearly 237 million people in the region are at risk of dying before the age of 40 years. 867 million people in the region do have no access to basic sanitation. 400 million adult people are unable to read and write and 300 million people are undernourished. The challenge of poverty in South Asia is not only huge it is also highly discriminatory against women. Poverty in fact has truly a woman face. These deprivation trends are rising. The issue of so-called national security, a political agenda for perceived threat or mutually created risk, is a priority agenda for governments of South Asia than that of grotesque life conditions of millions of poor and deprived people. For further details; see, The poor state of MDG on health is example. South Asia is unlikely to achieve this goal by 2015. See at *Human Development Report: Poverty and South Asia, 2006*; The Mahabub ul Haq Human Development Center; Oxford University Press.

⁸⁸ See in Chapter on "Armament, Disarmament and International Security". Available online at www.sipri.org/yearbook/2009/files/SIPRIYBO905.pdf

⁸⁹ See in Chapter on "Armament, Disarmament and International Security". See online at www.sipri.org/yearbook/2009/files/SIPRIYBO905.pdf

⁹⁰ Ramachandran, S., "Sri-Lanka takes off the gloves", Asia Times, 5 Jan. 2008.

⁹¹ The defense spending, in real terms, in 2008-9 is \$ 935 million. It represents 6.4% of the total Government spending. The spending in sector of Transportation and Communication is 6.1 percent. It is 5.9% in health and 5.6% in public order and security. See Ishfaq Ilahi, "Bangladesh defense budget 2008-9: An Analysis", The Daily Star, 07 May, 2008.

sector.⁹² As reported by World Health Organization in a study, the health spending accounts for only about 2% of the global spending while South Asia contains around 23% percent of the world population. Evidently, South Asia in terms of share in global health spending falls to the bottom. Here, the share of spending on social security is only 0.9 percent. The tax collected from the people meets only 21.8 percent source of the spending. The share of external resource in health spending is limited to 1.2 percent. The private insurance sector contributes 0.7 percent. Evidently, 73.4 percent of the total spending in health sector has to be paid by people out of their own pockets.⁹³ It is worth saying here that access to health service for majority of the population in South Asia is merely a dream never to come true as South Asia is a home of 43% poor people of the world.

The statistics on military spending, including investment on armaments and other means of achieving military strategic superiority, makes it plain that the Governments of South Asia are more disturbed by perceived threat of national security. The inhuman problems, miseries and plights of the one third population of the region are a matter of secondary, rather tertiary, concern. While countless of people do have nothing to eat, the South Asian Governments are spending enormous amount of money on building military strength. This mischievous intention along with erroneous policies has institutionalized poverty in South Asia. Human rights, democracy and similar other entities do hardly have any meaning for poor people in South Asia.⁹⁴

⁹² Jean-Pierre Poullier, et al., "Patterns of Global Health Expenditures: Results of 191 Countries" , EIP/HFS/FAR Discussion Paper No. 51; World Health Organization, November 2002. Online see at www.who.int/healthinfo/paper51/pdf

⁹³ Jean-Pierre Poullier, et al., "Patterns of Global Health Expenditures: Results of 191 Countries" , EIP/HFS/FAR Discussion Paper No. 51; World Health Organization, November 2002. Online see at www.who.int/healthinfo/paper51/pdf

⁹⁴ The forms of governments in South Asia are, to some extent, kleptocratic. In a kleptocratic regime, the State is controlled and run for the benefit of an individual or a group-political, social or economical. The individual or group in such a regime pursues not only the wrong or disastrous development policies but also uses powers to transfer a large fraction of society's resources to their private benefits. The political elites of Nepal, for instance, are using a huge amount of money for private luxury such as expensive cars, foreign trips, allowances, gratuities and so on. Each prime minister and home minister on retirement occupies an expensive car for their personal use. Use of exchequer for retaining in power is another form of kleptocracy in Nepal. Distribution of fund from the 'prime ministerial fund' is an example. "Patronism" in politics is what the kleptocracy is rooted in South Asia. The politics is virtually controlled by a family clan or one-man leadership. On nature and approaches of Kleptocracy; see, Daron Acemoglu, et al. "Kleptocracy and Divide-and-Rule: A Model of Personal Rule"; Massachusetts Institute of Technology, Department of Economics Working Paper Series- Working Paper 03-39, July 2003. Available online at <http://ssrn.com/abstract=471828>

A series of study have made it clear that approximately one third of the South Asian population is chronically poor, thus being subjected to several forms of deprivation throughout their lives and are most likely to pass it on to their future generations. The figures are astounding. While the region's share in the world population is 23 percent, it contains 43% of the world's poor. Poverty does not mean merely a lack of income. It also includes other adverse conditions of life, the deprivation or denial of opportunities for living a dignified life being the most important one. In the region there are estimated 460 to 480 million people who are fully deprived of opportunities to survive with adequate food and other basic minimum facilities such as clean drinking water and so on.⁹⁵

Poverty manifests itself in state of lacking of income and denial or deprivation of opportunities and in a number of other forms. Results such as premature deaths, poor health, illiteracy and ignorance and ensuing inability to enjoy opportunities, poor living conditions and lack of personal security can be attributed to poverty whereas poverty can be attributed to deprivation of 'basic human rights'. The state of income, poverty and deprivation of education are interlinked, and poverty together with gender inequality and social discrimination create a vicious circle of deprivation and subordination. All these attributes are interlinked in numerous ways to form a vicious circle that necessarily create a trap of constant denial of rights and extreme form of disadvantage.⁹⁶

The impact of the trap created by the vicious circle of poverty and human rights violation is not only limited to the 'life in the post-birth condition'. The impact is more grotesquely devastating in the pre-birth state. The cruel impact of income poverty and deprivation starts as early as in pre-natal stage. The recent discoveries of the medical science researchers have abundantly confirmed that the 'effect of poverty and deprivation of mother' is devastating to the health of the fetus. The kind and quantity of nutrition the child in pre-natal stage has received in

⁹⁵ For detail information, see Human Development in South Asia: A ten Ten-Year Review, The Mahabub ul Haq Human Development Center; Oxford University Press.

⁹⁶ Persistent poverty, which is deeply rooted in denial or violation of human rights, is a source of violence or conflict in society. Conflicts on the other hand weaken already depleted resources and further cripple the fragile economy. Decline in GDP is another impact. These factors in turn intensify the conflicts. The results of conflicts are disastrous for poor. Examples in this regard are abounding. In Congo, two full-scale wars erupted in the mid-1990s, ultimately resulting in the deaths of an estimated 4 million people. Nepal itself is an example- estimated 14000 people died in a decade long Maoist insurgency. On cycle of poverty, conflict and kleptocracy; See, Daron Acemoglu, et al. "Kleptocracy and Divide-and-Rule: A Model of Personal Rule"; Massachusetts Institute of Technology, Department of Economics Working Paper Series- Working Paper 03-39, July 2003. Available online at <http://ssrn.com/abstract=471828>

the womb; the pollutants, drugs and infections the fetus is exposed to during the gestation; the mothers' health, stress level and state of mind which she was pregnant with the fetus—all these factors do shape the future of a fetus as a baby and a child and continue to affect him/her all throughout life.⁹⁷

The pioneers⁹⁸ of the gestation research have recently with abundance of evidence asserted that the nine months of pre-born state constitutes the most consequential period of human lives, permanently influencing the wiring of the brain and the functioning of organs such as the heart, liver and pancreas. The conditions the fetus encounters in uterus shape his/her susceptibility to diseases, his/her appetite and metabolism, his/her intelligence and temperament in the entire forthcoming life.⁹⁹ The health researchers of pre-natal conditions have uncovered a series of facts that suggest that the origin of cancer, cardiovascular disease, allergies, asthma, hypertension, diabetes, obesity, mental illness are consequences of adverse conditions the mother of fetus is exposed to.¹⁰⁰ Poverty and deprivation pose the most negative impacts on the life of the mother. The impact created by the poverty and deprivation is enduring. The state of poverty and deprivation of mother forces a person to be born with diseases or physical and mental deficiencies. The issue of human rights is thus a matter of concern in human life before he/she is born. This fact is however ignored by the human right jurisprudence.

It is a given state of affairs that 'one in every three people' in Asia is forced to survive in a condition of abject poverty and deprivation, the Asian nations are obviously responsible for violation of human rights as they have failed to ensure a 'safe and healthy birth of a child'. It is plain from this fact that the Governments of South Asia, by their wrong attitude, policies and actions, which lead them to spend more money on military installations and strategic superiority missions than food and health of their citizens, are forcing millions of children to come out in this world with poverty inherited defects and diseases causing serious violation of human rights.

⁹⁷ See Paul, Annie Murphy. "Cancer. Heart disease. Obesity. Depression. Scientists can now trace health to the nine months before birth" in TIME, October 4, 2010.

⁹⁸ David Barker, a British Physician, two decades ago, noticed an odd correlation between poorest regions of the England and Wales and the highest rates of heart diseases. His investigation after comparing the adult health of some 15,000 individuals with their birth weight, he discovered an unexpected link between small birth size—often an indication of poor pre-natal nutrition, and heart disease in middle age. Professor John Karl, at SUNY Downstate Medical Center in New York, found that the metabolism system of a child was made by his/her pre-natal experience. The mother's condition of health was determining factor for this. Poor mother transferred her poverty to her child in womb. Daniel Benysshak, a medical anthropologist at University of Nevada at Las Vegas, found that some simple changes made during the pregnancy could reduce the offspring's risk for diabetes. See *Ibid*.

⁹⁹ See Paul, Annie Murphy, 2010.

¹⁰⁰ *Ibid*

It implies that the violation of human rights is not only associated with the proper treatment in post-natal stage, it is also equally associated with adequate facilities and good care of mothers during their pregnancy. The right of a child to grow as a healthy person is thus related with right of mother to good food, shelter, health and other rights.¹⁰¹

The perceived threat of security and ensuing military spending is a major cause behind persistence of the chronic poverty in South Asia. The security threat in fact is a hoax used by the Governments¹⁰² to 'legitimize the spending', which is of course a rich source for corruption—the bigger the military spending, the greater the opportunity for accumulation of wealth by 'commission' or 'other forms of transactions'. Poverty thus can be attributed to the 'kleptocratic nature of the Governments in South Asia'.¹⁰³

VI. RECENT ECONOMIC GROWTH IN SOUTH ASIA AND ITS IMPACTS ON LIVES OF POOR PEOPLE

Abundance of reports from national governments and world organizations like Asian Development Bank and World Bank have described that South Asia is well established on a high economic growth path, with strong and improving macroeconomic fundamentals. In statistics, the description may be true. The life of people in reality is, however, implausibly different. As Human Development Report in South Asia, 2006, has rightly noted, "South Asia remains the most impoverished region in the world in terms of income as well as human

¹⁰¹ In a village, the writer encountered a poverty stricken family with three children all with acute sickness. The mother had given birth a number of child many of who died before age of five. This is a scenario of many Asian poor villages. Children are born with mental and physical defects. After birth, they will not be able obtain nutritious food and proper treatment. Feeding their mothers will have no meaning as the mothers have no nutritious food to impart them nutrition. If they survive somehow, they will not have opportunity to go to school. If they are girls, they will be the victims of 'patriarchal customs' and will be forced to get married and become pregnant prematurely, and, many of them, ultimately will die pregnant or at childbirth. In Nepal, as reports have stated, about 250 mother in one hundred thousand die during pregnancy and childbirth. Source, Ministry of Health, Nepal Government, September, 2010.

¹⁰² Most South Asian Governments are carbon copies of British colonial bureaucracy in their formal trappings, the elite values of the past govern the behind-the-scenes machinations over the graft, patronage, and power. The governments with this nature consume huge amount of resources by corruption of public funds. This form of government is living reality of the South Asian Nations. To loot resources for their private needs and luxury as well as power, political leaders are always prepared to commit any amount of violation of ethics or law. The political instability is attributed to this factor. The source of corruption lies on 'elite values, patronage and power'. For more on this; see, Anjum Siddiqui (ed), 2007, "India and South Asia: Economic Development in the Age of Globalization".

¹⁰³ On magnitude of corruption and its linkage with development; see Transparency International, 2002. "Corruption in South Asia: Insights and Benchmarks from Citizens Feedback Survey in Five Countries", December, 2002.

development indicators, such as health and education". While economic growth rate is supposedly increasing, the region is known to have the largest absolute number of poor in the world'. South Asia is home to 43 percent of the world's poor—an estimated 437 million people live below one US dollar a day, whereas three-fourths of the total population survives below two US dollar a day. It is disheartening to say that 237 million people in South Asia live at risk of dying before the age of 40 years. Furthermore, it is a fact that 867 million people in the region do not have access to basic sanitation and more than 300 million people are living undernourished. The significance of the recent economic growth is thus widely suspected looking from human rights perspective.¹⁰⁴

With India in the lead, the improvement in performance in South Asian economy is reportedly broad based. In 2007, the state of the GDP growth rate was as follows: Afghanistan 3.4%; Bangladesh 4.9%; Bhutan 21.4%; India 7.4%; the Maldives 5.7%; Nepal 4.7%; Pakistan 2.7%; and Sri-Lanka 7.7%. India with over 60% of the total South Asian population has not only crucial but decisive role in economic development of the region.¹⁰⁵ While economic growth rate varies in different SAARC members all are not doing equally good, the spectacular increase in economic growth rate of India is playing a crucial role viewing from the fact that 60% population of South Asia belongs to India alone. Due to macro-economic growth rate, the proportion of the income poverty is supposedly declining in most members of South Asia. Adult literacy rates have gone up from 49 to 58 percent; the net primary enrolment situation sharply increased from 61 to 87 percent;¹⁰⁶ drop-out rate at the primary level has come down from 43 to 14 percent; and the number of out-of-school children has been reduced from 50 million to 13 million. Infant and under-five mortality rates have also gone down significantly.¹⁰⁷ Each individual member of South Asian region has gone a long way in progress.

Intellectuals, policy makers and planners in South Asia and beyond believe that the recent macroeconomic growth rate in some South Asian countries has positively impacted the human

¹⁰⁴ See Human Development Report in South Asia, 2006

¹⁰⁵ See, World Bank, South Asian Economic Report (SAER), 2007

¹⁰⁶ The net enrollment ratio (NER) in Nepal is promising. As reported by the Ministry of Education, Nepal, the number of net enrolled children has reached at 89.3 percent. NER in the case of girls has reached at 85.5 percent, still 4 percent less to boys. However, the NER for girls shows an upward trend. The literacy rate is improving remarkably as well. As per the Ministry of Education, literacy rate in 2009 of the age group between 15 and 24 has reached 75 percent and age group 6 year plus is 69 percent. The literacy rate at the age group 15 year plus is 56 percent. For detail see 'Nepal's State Party Periodic Report to CRC Committee'.

¹⁰⁷ Human Development In South Asia 2007: A Ten-year Review, The Mahabub ul Haq Human Development Center; Oxford University Press, at Ch. Overview.

development paradigm of the region. In turn, the human development paradigm has influenced economic and social development policies and plans in the region.¹⁰⁸ 'The Human Development in South Asia 2007- A Ten-year Review', for instance, claims that 'the human centered policies and actions as well as the ongoing economic reform programs in the region in the recent decade has witnessed progress in many areas'. The report has identified the following areas as making spectacular progress:¹⁰⁹

- a. Economic growth rate of the major economies of South Asia has increased.
- b. Poverty has declined in most countries, although rural poverty is still a major issue in some countries.
- c. Literacy rate has significantly gone up.
- d. Infant and under-five mortality rate has reduced significantly.
- e. Women's economic and political empowerment, as captured by GDI and GEM indices, has recorded higher values over the period, and both access to and enrolment of girls in primary and middle schools has increased rapidly.

These indicators of progress are supported by organizations such as UNDP, the World Bank and the Asian Development Bank.¹¹⁰ In particular, Nepal's position for meeting many of MGD goals is appreciated internationally. The Nepal Demographic and Health Survey, 2006, presents that the infant mortality rate has come down to 48 per thousand live births and neonatal mortality (less than 4 weeks) has come down 33 per thousand live births. The under-five mortality rate has been reduced down to 61 per thousand live births. The immunization (BCG,DPT+HEP-B, Polio and Measles) rate of all six antigens in infants is more than 85 percent. Nepal is said to have successfully eliminated the neonatal tetanus and more than 9.5 million children have been given second dose of measles vaccination and this has reduced the post measles deaths significantly. Moreover, Nepal has been declared a polio free country in South Asia. However, in matter of the overall nutritional status of the children Nepal is facing a serious challenge. A large number of children in rural part of the country have no adequate food available. The poverty is thus a serious affliction on prospect of many children growing as 'healthy adults'. The fruits of these developments are largely confined to cities—the urban educated population is mainly benefited by these progresses. The gap between city and

¹⁰⁸ *Ibid*

¹⁰⁹ *Id*

¹¹⁰ See Human Development Report, 2009; UNDP.

countryside is a serious problem in all South Asian countries. The governments, with their kleptocratic nature, are less attentive to this gap which is putting increasingly bigger number of people in crisis of life. The macro-economic growth has thus emerged with conceivably larger risk of human rights violation.

VII. SOME MACRO-PROBLEMS AND EFFECTIVE STRATEGIES NEEDED TO PROMOTE HUMAN RIGHTS

Some positive stories of the macro-economic successes in South Asia and other parts of the world do not represent total reality. The thesis that average incomes of the poor of society rise proportionately with average incomes is no longer a plausible theory of development and human rights. The present successes of the South Asian economic growth represent only a scenario of the regional averages. The rise in macro-economic growth rate alone is not enough to reduce poverty and address other forms of deprivation. The looming South Asian scenario invalidates the theory that the liberal economic policies such as monetary and financial stability and open markets alone raise incomes of the poor and everyone else in society proportionately.¹¹¹ There are several other determinants of the rise in incomes of the poor and change in the vector of their lives. Specifically, progressive rule of law, openness to international trade and developed financial markets, less consumption of financial resources by the government, control on inflation and strict financial disciplines are essentially important factors of income rise of the poor. These factors along with attainment of primary education increased spending on public health and education, labor productivity in agriculture relative to the rest of the economy, and enhancement of formal democratic institutions engender a positive atmosphere for income growth of the poor.¹¹² The state of these factors in South Asia is poor.

The objective of growth in incomes of the poor is to 'achieve transformation in the lives of people'. The change in life enables individuals to accommodate new demands by acquiring new

¹¹¹ There are two schools of thought in debate regarding impacts of macro-economic growth rate in society. Some economists and development experts argue that the potential benefits of economic growth for the poor is undermined or even offset entirely by sharp increases in inequality that accompanies the growth. According to this thesis, the economic growth is extorted by educated urban population leaving rural poor untouched by benefits of economic growth rate. The eventual outcome is that 'the gap between poor and rich is enlarged. At the other end of the spectrum is the argument that liberal economic policies such as monetary and fiscal stability and open markets raise incomes of the poor and everyone else in society proportionately. This paper and more about debates is available at <http://www.worldbank.org/research/growth> last visited on 22 October 2011

¹¹² David Dollar & Arat Kraay, "Growth is Good for Poor"; Development Resource Group, The World Bank. This paper is available online at <http://www.worldbank.org/research/growth> last visited on 22 September 2011.

skills of life and hence increase productivity. The scope of 'skills' acquired by the poor is limited. A professor, for example, can easily learn skills of driving a car and thus can easily change his/her profession. This potential is attributed to his/her education and capacity to change life. A poor farmer, however, cannot easily change his/her life due to lack of education. Education is, thus, significant for rise in income. It implies that income growth is not *all* for human development. The income alone does not improve all aspects of the life of individual.¹¹³ The factors described above are indispensable for overall human development. The scenario of these factors or determinants of development in South Asian countries is elaborately discussed below.

The role of law at this juncture becomes inevitable. All these determining factors of human development should be the primary concerns of the 'system of law'. Income growth as well as human development, in oblivion of a 'legal system' impregnated with pro-poor policies, formal democratic institutions and mechanisms to offer remedy in a state of denial of benefits from these policies and institutions, is nothing but a 'myth'. The legal systems of South Asian nations are great detriments in this regard. The legal systems are hardly coherent with need of income growth and human development enhancing policies and institutions. A reform of the legal systems is a prerequisite for extending the benefits of the economic growth to the poor. The reform must address the following sectors as a primary agenda:

- Quality in many spectrums, ranging from gender, socio-economic, geographical and ethnic disparities, is a detriment of income growth as well as overall human development.
- Psychology of law that it is an instrument of the State to regulate citizens' behavior is equally important detriment for progressive change in the vector of lives of the poorest section of the population. The South Asian governments invariably consider that the 'poor population is a problem of their nations' development'. They use law to 'protect State's privilege of making decisions' in disregard of the interests or choices of this segment of the population. The duty of the State to work for change in the vector of the

¹¹³ The income growth of the poor does not automatically respond systematically to a number of supposedly 'pro-poor' policies including formal democratic institutions and public expenditure on health, education and social security. The income growth also does not necessarily automatically respond to the development of human rights protection mechanisms. Rule of law, well-defined financial disciplines and fairly and impartially protected access to market competitions and most importantly guarantee of rights by legal system to development (a determinant to change in vector of life—from regressive status quo to progressive transformation of life conditions) are systematic instruments for 'human development'. For further detail discussion; See David Dollar & Arat Kraay, *Ibid*

lives of people is refused, and the law is used as an instrument protecting the 'older values, power-centric governance system and machinations to protect State's discretions in development activities'.

- The poverty impact of growth has not declined even in recent years. The growth spurred by open trade or other macro-policies benefits merely the upper-strata population. As pointed out above, the average growth of income does not appear to have an effect on the crises of lives the poor population is living in. The growth in fact has created added hardship on the poor. The growth has increased the government's consumption of resources, and has intensified the corruption. The spending on so-called military and other perceived needs has increased manifold. The legal systems of the region have utterly failed to 'protect the rights of the poor to socio-economic security'. In short, the legal systems of the region have failed to systematically respond to the Governments' responsibility to increase public spending on health, education and empowerment of the poor, introduce stringent financial disciplines, follow rule of law in decision making and impose sanctions on corrupt officials, and make the system of law an instrument of protecting rights of people.
- The legal transplant from developed countries is phenomenal in the region. The investment on justice, research, development and planning of laws, and reforms and development of law enforcement institutions is considered unproductive. State's lack of inclination to enhance rule of law based-legal regime as an essential development strategy has caused international organization to jump in and promote the notion of 'legal transplant'. The legal systems of the region in lack of indigenous and development warranted insights, have become in themselves, instruments of violation of rights of the poor.

These pitfalls in the legal systems have negatively affected the elements of justice in the present paradigm of economic growth in South Asia. Due to the absence of progressive law as an 'instrument of linking development efforts with notion of justice', 'the rise of average incomes has excluded the poor. The current growth pattern denies a fact that 'equitable distribution of the income is a precondition for reduction of poverty'. This is a consequence of the failure of the legal system. Financial and monetary stability and open market policies alone cannot guarantee access to the poor to benefits of economic growth. According to "Kuznets

hypothesis", inequality tends to increase during the early stage of development and then decreases later on'. Theoretically, the hypothesis bears no objection. However, the theory cannot justify a notion of 'taking income growth of the poor for granted on the basis of the growth of average economic growth of a society'. Role of an independent intervening factor or element is necessary as a prerequisite for 'setting up of the relationship between income growth of the poor and average economic growth of the society'. The independent intervening element is 'a well defined system of equitable distribution of benefits of the development'. And, for this society needs a well defined framework of law. The benefits of the average or macro-economic growth in a society are thus made available to the poor by the system of law. The system of law, on the other hand, works through instrumentality of 'the system of governance'. This thesis asserts that 'the macro-economic development of a society is achievable only through an interplay of economic principles of average income growth and a progressive system of law promoting equitable distribution of advantages and good governance'. The relationship between average economic growth of a society and the income growth of the poor is an overlapping issue of economy and law—no economic affairs such as financial and monetary stability and open market alone can ensure 'equitable growth of individuals' income without having a well planned system of law'.

The state of unremitting poverty and deprivation in South Asia is a result of persistent denial by the Governments of South Asia of a thesis that 'the interplay of a macro-economic growth and the system of law promoting equitable distribution of advantages' is a prerequisite. As noted before, the legal systems of the South Asian countries are the worse factors for blocking the poor from taking advantage of the ever inclining macro-economic growth in the region. With no doubt at all, the prevailing legal systems in the region are colonial in prodigy, formalist in operation and patronizing in distribution of advantages.¹¹⁴ Consequently, the current macro-economic growth in the region is contributing to worsening the 'lives of poor'. The legal systems have grotesquely failed to address the problems of corruption, government frauds, illegal political party financing, embezzlement, bribery, favoritism, extortion, abuse of

¹¹⁴ Constitutions of most countries of South Asia meticulously deny recognizing the 'economic and social development rights' as fundamental rights. The economic and social development planning is considered as a 'prerogative of the Government'. The people have neither say 'in decision making nor participation in development activities'. The public resources are considered as 'the property of the government', hence the governments consider no need of popular participation in decision making in matters of development projects. For debate on this issue; see Yubaraj Sangroula, 2010 at Ch. 5

discretion, and so on, and they are stealing the fruits of economic growth from of the poor people *en masse*. The problems are in fact making the poor ‘the poorest’.

The level of economic and social transformation achieved by individual countries, especially by regions and groups within each country, differs significantly. The exclusion of the poor and marginalized communities is a serious problem in the region. The benefit of the economic growth is exclusively exploited by the upper, middle and elite classes. Consequently, despite the remarkable indicators of economic growth rates referred to above and ensuing decline in statistics of poverty, there is hardly any change in the quality of lives of the millions of people living in poverty. The actual number of people living in poverty has not gone down, and health and education indicators are still matters of concerns for realistic scrutiny.¹¹⁵ The efficacy of the system of law and justice is, thus, obviously questionable.

In fact, poverty in the region continues to remain huge and, therefore, constitutes one of the major causes of violence and human rights violation both structurally and systematically. Even today, the region fails to address poverty as a daunting cause of structural violence. The Governments of South Asia, hence, deserve no thanks, being in powers for so many years after the end of colonial rules. The seriousness and required interventions to address the problems of poverty is less visible in the systems of law and attitudes of the Governments in the region. Specifically, the following scenarios will present a scary picture of poverty and human rights violation in the region:¹¹⁶

A. India

Aggregate economic statistics on evolution of poverty in India point fairly unambiguously towards steady, albeit slow, progress in the reduction of poverty. According to these statistics, the poverty headcount has drastically declined. Yet, the impact in rural part of the society has made no strong mark.¹¹⁷ Over a period after 1990, India has achieved remarkable growth in GDP, accompanied by macroeconomic stability.¹¹⁸ The cruelest part, however, is that the problem of social exclusion based upon income, caste, gender, and geographical location

¹¹⁵ Human Development In South Asia 2007 at Ch. Overview.

¹¹⁶ For drawing attention of readers to some specific representative problems related with poverty, India, Bangladesh, Pakistan, and Nepal selected as examples here. Hence, the reference of these four countries should not be taken to mean that the other countries in the region are free of problems relating to poverty.

¹¹⁷ India: Country Economic Memorandum Report No. 14402-In, The World Bank, 1995.

¹¹⁸ Human Development in South Asia 2005: Human Security in South Asia; The Mahbub ul Haq Human Development Centre, Pakistan.

continues to exist treacherously.¹¹⁹ The benefits of economic growth have not been translated into reduction of poverty and human deprivation. In the wake of massive macroeconomic progress made over the last two decades, the gap in inequality of income has sharply increased.¹²⁰ Impact of the growth is mainly confined to the urban areas and has mostly benefited the urban middle class that is well equipped with education and skills.¹²¹

A recent study by Asian Development Bank has confirmed that the fruits of rapid economic growth are not reaching the poor.¹²² The study has pointed to a grim situation of inequality. The widening gap between urban rich and rural poor people implies that the better-off sections of society have experienced a significant increase in their standard of living, whereas the poor population is exposed to added hardships of life. The least- well-off section has been pushed to a state of added sufferings due to ostensible increase in the price of basic substances in the wake of economic growth.¹²³

The Times of India¹²⁴ gives a further grim situation of the poor people in India. Referring to a report of the National Commission for Enterprises in the Unorganized Sectors (NCEUS), 75% of Indians are poor and vulnerable. 79 percent unorganized sector workers, 88 percent Scheduled Caste and Scheduled Tribes, 80 percent backward class people and 84 percent Muslims belong to the poor and vulnerable groups. These groups continue to remain poor at a bare subsistence level without any social security and are forced to work in miserable, unhygienic and unlivable conditions.¹²⁵ The categories of 'poor and vulnerable' groups are forced to survive on less than Rs. 20.30 per capita per day, which is twice the poverty line, or further less. As the Times of India states, 77% of India's population falls within this bracket. Furthermore, 6.4% people of this group are forced to live on less than Rs. 9 per day. Another 15.4% lives in between this layer and the poverty line.¹²⁶

Studies have revealed that about 800 million Indians are living in a state of extreme poverty and are not technically included in the category of below poverty line for they earn Rs. 20 per

¹¹⁹ Human Development In South Asia 2007 at 2

¹²⁰ Human Development in South Asia 2005

¹²¹ For detail facts and figures; see, Human Development in South Asia 2005

¹²² See in "Rising income inequality in Asia", A Bulletin of South Asia Alliance for Poverty Eradication, Kathmandu, Nepal; October 2007, at 20

¹²³ *Ibid*

¹²⁴ 11 August 2007

¹²⁵ The Times of India, 11 August, 2007.

¹²⁶ "75% of Indians are poor and vulnerable", *Ibid*

day, which is more than cut-off line of Rs. 12. Seemingly, the amount is hardly enough to live a dignified life.¹²⁷ Though they are technically above the poverty line, they continue to be dismally poor. Nearly 85% of them belong to scheduled caste, scheduled tribes, backward class and Muslims.¹²⁸ The impact of social exclusion is self-evident here. The extremity of human rights violation is obvious by these figures.

This section of the population is discriminated against and forced to live in a disadvantaged and downtrodden condition. The so-called mammoth economic growth rate, thus, has no meaning in the lives of the poor. Economic growth without adequate distribution of development opportunities makes no sense for human rights. Macroeconomic development, thus, cannot be taken as an indicator of positive human rights trend. Development, which implies a state of 'human security' against regressive status quo, is missing in India despite its mammoth economic growth rate. The given condition of looming poverty indicates an extreme form of human rights violations in India.

The pattern of employment in the agriculture sector is also a fertile ground for perpetuating the poverty, especially for small and marginal farmers. In India, 84% of small and marginal farmers are placed in a condition where they are forced to spend more than they earn, thus, falling into a trap of debt. Nearly 84% of all farmer households are forced to spend Rs. 2770 per month against their earning of Rs. 2115.¹²⁹ The rise of per capita income to \$1000, thus, has nothing to offer to the vast majority of population which lives in extreme poverty in the rural parts of the country.

The rise in GDP is mainly achieved due to sharp increase in income of the middle and higher income groups.¹³⁰ This has, in turn, sharply widened the gap between rich and poor people. The development paradigm is not only faulty but visibly antagonistic to masses of the poor people. The so-called development paradigm is, in addition, worsening the prevailing state of regressive status quo. The system of law is an important instrument of breaking this 'regressive status quo'. Poverty contributes to continuation of the status quo, hence, constitutes a factor of human rights violation. International human rights mechanisms put States under

¹²⁷ "83.6 crore Indians live on Rs. 20 per day", Hindustan Times, 10 August 2007.

¹²⁸ "83.6 crore Indians live on Rs. 20 per day", *Ibid*

¹²⁹ "83.6 crore Indians live on Rs. 20 per day", *Id*

¹³⁰ For theoretical discourse on GDP growth and income of the poor; see, David Dollar & Arat Kraay, "Growth is Good for Poor"; Development Resource Group, The World Bank. This paper is available online at <http://www.worldbank.org/research/growth> last visited on 22 September 2011.

obligation to ensure human security and dignity by adequately enforcing international human rights instruments. Since international human rights mechanism are not enough for adequate enforcement of international human rights norms, the mechanisms set up by domestic laws could play a decisive role in the enforcement of international human rights norms.¹³¹ Removal of a state of regressive status quo, reduction of poverty and income growth, and guarantee and enforcement of human rights are three constituent elements of human development, all of which come into operation through system of law. Like other members of the region, India has significantly failed to engineer a 'pro-active, pro-poor, pro-development legal system' that could play an important role in reducing the gap of income disparity.

B. Bangladesh

Economic growth rate in Bangladesh in the last two decades has no doubt improved significantly. Analysis of the poverty trends has shown a consistent decline in poverty incidence, especially in the rural areas. Bangladesh, over the past few years, has enjoyed credible record of sustained growth within a stable macroeconomic framework. However, it continues to suffer from acute interface of poverty dynamics and unfavorable agro-ecological and climatic environment. Other factors contributing to this interface include low human capital accumulation, unregulated and highly informal labor market, health hazards and illness, social risks like weak rule of law resulting in crime, violence and insecurity, political unrest and corruption.¹³² The benefits of economic growth are, thus, exacted by a smaller urban middle and higher income groups. There are plenty of indicators to show that a large number of households hover around the poverty line implying that the high ratio of households could potentially fall back into poverty line.¹³³

A significantly large population of Bangladesh remains in margin between \$1-a-day poverty to \$2-a-day poverty line. The decline in \$1-a-day poverty line has contributed to overall decline in figure of the poor population. The ground reality, however, is different; there are staggeringly large numbers of poor people at the 'margin' who can potentially fall back below

¹³¹ See Oona Hathaway, *The New Empericism in Human Rights: Insights and Implications*, 98 AM.SOC'Y INT'L L. PROC. 208 (2004). Also see, Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 A.J.S 1373(2005).

¹³² Azam, Shaiful Md. And Imai, Katashuhi S., "Vulnerability and Poverty in Bangladesh", ASARC Working Paper 2009/02. See at Online http://rspas.anu.edu.au/papers/asarc/WP2009_02.pdf

¹³³ For detail analysis, See, Ibid

poverty line.¹³⁴ Reportedly 68 million individuals remain in this range.¹³⁵ Hence, the contribution of recent economic growth in the lives of large masses is extremely limited. The so-called development, thus, has very little role in 'change of the penetrating regressive status quo', which is a major factor of deprivation.

The poverty decline trends present an impressive development in efforts of poverty eradication. The official figure for the estimated level of poverty during the period of independence stood as high as 82.9 percent, whereas in 2005 it has declined to around 40 percent.¹³⁶ However, the impressive statistical poverty reduction record in reality is different. First, poverty in Bangladesh continues to deprive around 60 million people of a dignified life as it continues to remain at very high level. Out of 60 million, 36 million people are still deprived of adequate diet.¹³⁷ This category of population is chronically underfed and consequently highly vulnerable. The people falling in this category have no assets to protect themselves from adversities of life. This segment of population has neither resource to health service, nor can it afford sending children to school.¹³⁸

The economic growth in the last two decades has been accompanied by the rising inequality between rich and poor. The level of inequality of consumption, in a period of ten years that is from 1990 to 2000 has increased from 31.9 to 37.9 percent in urban areas and from 25.5 to 29.7 percent in rural areas. The rising income inequality is, thus, creating an adverse condition to the pace of economic growth itself.¹³⁹

The people falling in the poverty group are, for worse, affected by periodic shocks such as natural disasters, illness and insecurity. A household survey conducted by Bangladesh Bureau of Statistics presents that 23.55 percent of people in Bangladesh are surviving in chronic poverty. 15.01 percent population lives in transient poverty, with great vulnerability of reversal

¹³⁴ Ajaya, T. and Rana Hasan, 2005, "Conceptualizing and Measuring Poverty as Vulnerability: Does it Make a Difference?" ERD Policy Brief Series No. 41. Manila: Asian Development Bank

¹³⁵ See Azam, Shaiful Md. 2009/02

¹³⁶ See Ahmed, A.U., 2000, "Trends in consumption, nutrition and poverty". In R. Ahmed, S. Haggblade, and T.E. Choudhary (eds) *Out of the Shadow of Famine: evolving food markets and food policy in Bangladesh*. Baltimore: John Hopkins University Press for the International Food Policy Research Institute.

¹³⁷ Bangladesh Bureau of Statistics (BBS), 2006, *Preliminary Report on Household Income & Expenditure Survey 2000*. Dhaka: Ministry of Planning

¹³⁸ See Quisumbing, A., 2007, "Poverty transition, shocks, and consumption in rural Bangladesh: Preliminary results from a longitudinal household survey". CPRC Working Paper-105. Manchester: Chronic Poverty Research Center, University of Manchester

¹³⁹ See Sen, B., 2003, "Drivers of Escape and Decent": Changing Household Fortunes in Rural Bangladesh. Bangladesh Institute Development Studies, Dhaka

to the chronic poverty trap. The population of high vulnerable non-poor is 9.25 percent. Hence, 47.81 percent people in Bangladesh live in higher level of vulnerability to poverty.¹⁴⁰ These poverty figures present that despite increasing efforts for poverty reduction over the years, poverty remains a pervasive factor in Bangladesh.¹⁴¹

The poverty and life-style has an interface. Poor people with minimal income cannot afford needed sanitation, safe drinking water, electricity and entertainment. In a given state of poverty in Bangladesh, a huge population is naturally deprived of such amenities. Some studies have noted that 62 percent rural people in Bangladesh have no sanitary latrine or they have a culture of using open space for defecation. The access to electricity is an issue of deprivation. In some places, 94 percent people are having no access to electricity.¹⁴² Most importantly, the food poverty is associated, as shown by a survey, with independent variables. They are: geographic location, gender, age, household size, occupation, and land ownership'. The poverty is, even more painful to people from backward geographic areas, women, menial workers, old and those having more members in family.¹⁴³

C. Pakistan

Economic growth rate in Pakistan reached at 6.8 percent in 2006-07. But it experienced a disheartening turbulence in 2007-08 and 2008-09 (declining to 3.7% and 1.2% respectively). The economic survey¹⁴⁴ of the Government of Pakistan presents an increase to 4.1% in 2009 - 10. On the other hand, the inflation rate has gone up to 20.77% in 2008-09 and showing a further upward trend. The food inflation which has immediate impact on poverty increased to

¹⁴⁰ Azam, Shaiful Md. 2009/02

¹⁴¹ Bangladesh in terms of GDP per capita is placed in a category of one of the poorest countries in the world. The Human Development Index (UNDP, 2002) has ranked Bangladesh as 145 the country out of 173 countries in 2002. Based on \$1-a-day income criterion for demarcating poverty line, 29% of Bangladesh lives under poverty line, whereas the percentage increases to 78, if the \$2-a-day income criterion is applied. Based on poverty line measured by direct calorie intake (DCI) method as less than 2,122 kcal per person a day, 44.3 percent (55.9 million) people fall in category of "absolute poor". Similarly, according to the cost of basic needs (CBN) methods, which constructs "upper poverty line" (a generous allowance for non-food items), and "lower poverty line" (a minimal allowance for non-food goods of those who could just afford the food requirement), the "upper poverty line is constructed at Taka (Bangladesh currency) 690 in 2000 for rural areas, whereas the "lower poverty line is estimated as Tk. 586. Applying these income standards, 49.8 percent and 53.1 percent people are regarded as income poor respectively. In any case, almost half of the Bangladeshi people are victimized by poverty. See, A.I. Mahub Uddin Ahmed, "Socio-demographic correlates of rural poverty in Bangladesh: A Case Study of Gaibandha Sadar and Tanore Upazilas"; online www.nscb.gov.ph/poverty/conference/papers/11_kam.pdf

¹⁴² *Ibid*

¹⁴³ *Id*

¹⁴⁴ Economic Survey 2009-10 in online www.finance.gov.pk/survey/chapter_10_0.pdf

23.7 % in 2008-09 but decreased to 12% in 2009-10. However, it has again shown a trend of escalation.

With rapid economic growth and considerably stable macroeconomic development in the past, Pakistan achieved tremendous decline in poverty; it experienced a decline in the headcount index from 73 percent to 23 percent.¹⁴⁵ Despite declining rate of poverty, many other indicators of human development are still nascent. As pointed out by the Human Development Report, 2009, Pakistan holds the position of 141st country in the global human development index.¹⁴⁶ Its position concerning improvement in the life expectancy at birth is 117th;¹⁴⁷ current life expectancy at birth is 66.2 years. Adult (age 15 and above) literacy rate is 54.2% and combined gross enrolment ratio of children in school is 39.3%.¹⁴⁸

As per the HDR, 2009, the human poverty index (HPI-1) remains at 33.4 percent. The Human Poverty Index (HPI-1) focuses on the proportion of people below certain threshold levels in each of the dimensions of the human development index—living a long and healthy life, having access to education, and a decent standard of living. By looking beyond income deprivation, the HPI-1 represents a multi-dimensional alternative to the \$1.25 a day (PPP US\$) poverty measures. Hence, HPI-1 value of 33.4% for Pakistan, ranks 101st among 135 countries for which the index has been calculated.

According to the said report, 12.6% people are still at risk of not surviving to the age of 40 years; 10% people still do not have access to improved water source; and 38% children age below 5 do survive in underweight situation.¹⁴⁹ The development in Pakistan has thus no meaning to a huge population, who is still at death row due to lack of nutritious food and clean water.

Global economic recession and deteriorating security situation negatively affected the economic growth rate of Pakistan. In 2009 it went down to 2.9% compared to 4.7% in 2008. The hardship of poverty in certain sections of the population is extreme. About two million scheduled caste people are among those suffering from worst poverty. Being poorest and

¹⁴⁵ *Ibid*

¹⁴⁶ See Pakistan in Human Development Report, 2009; At online <http://hdr.undp.org/en/humandev>

¹⁴⁷ *Ibid*

¹⁴⁸ *Id*

¹⁴⁹ *Id*

belonging to the scheduled caste, they are vulnerable to worse form of discrimination and ill-treatment.¹⁵⁰

As reported in a conference,¹⁵¹ the illiteracy level among Dalit communities stands at 73% against national literacy level of 54 percent. The nexus of discrimination, illiteracy and poverty is well visible; approximately 56% of Dalit families live in a single room shanty houses and children dying in these communities below age of five years was reported by 35% families.¹⁵²

Pakistan has the worst record concerning protection of social rights of women in South Asia. Freedom of movement of women is gravely obstructed. Similarly, women's inheritance rights are hardly respected. The problem of polygamy is most chronic.¹⁵³

D. Nepal

According to the Human Development Report, the HDI of Nepal, between 1980 and 2007, rose annually by a rate of 2.16 percent, i.e. it increased from 0.309 to 0.553. This position gives Nepal a rank of 144th out 182 countries. With this rank, Nepal is two positions ahead of Bangladesh and two positions behind Pakistan. In terms of life expectancy at birth, with 66.3 years on average of men and women, Nepal's position is 115th; in adult literacy rate, for ages 15 and above, stands at 130th rank, with 66.5 percent; in combined gross enrolment ratio the rank is 136th with 60.8%; and in GDP per capita occupies the 165th rank with \$1,049.¹⁵⁴ The state of poverty and vulnerability is, thus, quite visible.

¹⁵⁰ See "Pakistan", in Bulletin of South Asia Alliance for Poverty Eradication, Kathmandu, Nepal; October 2007, p. 27

¹⁵¹ National Workshop on "Caste-based discrimination in Pakistan, held on June 3, 2007 in Karachi. This Conference was organized by the Pakistan Institute of Labor Education and Research (Piler) and the Thardeep Rural Development Programme ITRADP). A study report was presented by Zulfiqar Shah in the Conference. The reported gave a grim situation of poverty and discrimination the scheduled caste people Pakistan were living in. According the report, the scheduled caste communities included Kolhi, Megwhar, Bheel, Balmaiki, Oad, Jogi, Bagri, and several other communities. These communities were treated as untouchable communities both by Hindu and Muslims. See "Information on the Caste System in Pakistan", a Report prepared by Refugee Documentation Center (Ireland), Legal Aid Board; at online www.unhcr.org/refworld/pdofd

¹⁵² "Information on the Caste System in Pakistan", a Report prepared by Refugee Documentation Center (Ireland), Legal Aid Board; at online www.unhcr.org/refworld/pdofd

¹⁵³ See Figure 3.15 in Human Development in South Asia, 2006: Poverty in South Asia: Challenges and Responses; The Mahbub ul Haq Human Development Center, p. 54

¹⁵⁴ See Nepal in Human Development Report, 2009; at online <http://hdr.undp.org/en/humandev/>

Nepal stands at 32.1% HPI-1 which places it at 99th rank among 135 countries for which the index has been calculated.¹⁵⁵ The HPI-1 measures severe deprivation in health by proportion of people who are not expected to survive to age 40. Education is measured by the adult literacy rate. And a decent standard living is measured by the unestimated average of people not using an improved water source and the proportion of children under age 5 who are underweight for their age. These values keep Nepal in the following position: For human poverty index with 32.1, Nepal has been placed 99th rank; with 11% people not surviving to the age of 40, Nepal has stood with 90th position; with adult literacy rate for ages 15 and above, it occupies a place of 135th country; with 11% people not using improved source of water, it obtains a rank of 73rd country; and with 39% children below age 5 having underweight, it occupies a place 127th country. In HPI-1 index, Nepal is two numbers ahead of Pakistan and trails only by two numbers behind Pakistan with regard to children underweight for their age.¹⁵⁶

Despite a decade long devastating civil strife, Nepal's progress in achieving MGD goals by 2015 is positive. As per the press note issues by UNDP on September 07, 2010, Nepal is close to achieving several of the eight globally agreed Millennium Development Goals by 2015 related to poverty, education, health and environment sustainability. Nonetheless, the problem of poverty and deprivation possess a serious challenge to protection of human rights. The press note of UNDP says: "While there is striking progress in reducing poverty, in getting children into school and in saving the lives of children and mothers the national averages continue to mask significant disparities between ethnic, social and economic groups, amongst rural and urban populations and people living in the mountains, in remote areas and in the Terai (low-land plains)".¹⁵⁷

The gender, ethnic and regional exclusion from socio-economic and political life of nation has been a serious problem encountered by development and modernization of Nepal. While the poverty line has declined to 25.4% in 2009 from 42% in 1996, the figures have hardly made any difference in lives of poor people. By contrast, the problem of gap between rich and poor and incidences of inequality in many respects is rapidly going up. The proportion of working poor—

¹⁵⁵ According to the National Planning Commission (Nepal), the national poverty level has gone down to 24.8 percent. See Asian Tribune, Tuesday, 14 April, 2009.

¹⁵⁶ See Nepal in Human Development Report, 2009; at online <http://hdr.undp.org/en/humandev/>

¹⁵⁷ "Nepal makes notable progress on the MGDs, eradicating inequality and social exclusion remain major challenges": Latest Updates, UNDP, Nepal. September 07, 2010. See at online <http://www.undp.org.np/successstory/successstory/php>

people who are working but earn less than a dollar a day is more than one in five. On hunger, the picture is grim with close to 40 percent of children below age of five underweight.¹⁵⁸

The food insecurity is a major problem for many people. High dependence on traditional agriculture, low productivity, small landholdings, limited off-farm and wage earning opportunities, low-wages/incomes, and various deep-rooted structural discriminations and exclusions are major factors causing food insecurity at household level. The food insecurity is also a cause of intensive migration and destruction of public assets such as forest.

The deep rooted power-centric political culture, political instability, and phenomenal impunity for violation of human rights accompanied by deepening problem of corruption are aggravating factors and they form an interface with the problem of poverty, exclusion and threats to democracy. The power centric-political culture and anti-people bureaucracy are seen as equally major obstacle for achieving progressive changes even after the historic success of conflict resolution in 2006. While there is a very strong support of poor and excluded groups and communities for peace and progressive changes in Nepal, regardless of their painful experiences during the conflict, the senile minded political leaders and bureaucrats are seen as stumbling blocks in the hopes of people for their socio-economic transformation. The leaders and bureaucrats have failed to see significance of democratic culture, effective state efforts and trust on good governance to efficiently combat poverty.¹⁵⁹

The descriptions given above on the interface of poverty and deprivation distinctly reveal that 'the systematic continuity of the regressive status quo' is a stumbling block to the human security and dignity in South Asia. No human rights can be protected without adequate opportunities for development that addresses the regressive status quo. Development in this perspective is 'a change in the static paradigm of life'. Development is an instrument of 'equality'. Equality ensures 'equity' which is a prelude for protection of human rights. This underlying notion of the interface between human rights and development is overlooked by the contemporary jurisprudence. The change in the above mentioned 'situation' can be brought about only by recognizing the indispensability of 'development' as a means of 'building

¹⁵⁸ "Nepal makes notable progress on the MGDs, eradicating inequality and social exclusion remain major challenges": Latest Updates, UNDP, Nepal. September 07, 2010. See at online <http://www.undp.org.np/successstory/successstory/php>

¹⁵⁹ See "Governance and Poverty in Nepal": Overseas Development Institute; September 01, 2010. At online, www.odi.org.uk/resource/download/3289/pdf

capacity' of individuals to address the problem of poverty and deprivation. The state of poverty and deprivation are consequences of 'human rights' violation and the protection of the same cannot be achieved without development, i.e. the progressive shift in the paradigm of life marred by regressive status quo.

The system of law can play instrumental role in promoting human development by promoting equity-based progressive changes in society. In South Asia, the role of law is, however, confined to behavior regulatory mechanism. The prime object of law is to 'ensure equal opportunities' for development of everyone'.

VIII. SOME COMMON ISSUES AND PROBLEMS RELATING TO POVERTY AND LAW

Nations in the south Asian region faces many similar problems or challenges concerning human rights protection and poverty alleviation. The country specific instances mentioned above abundantly shed light on the types of human rights violations posed by poverty and ill-governance in South Asia. The following pressing representative problems will provide additional insights about and spatial intensity or extremity of poverty and ill-governance in South Asia.

Gender and poverty: In South Asia, the poverty is more prevalent and acute among women. Women tend to be food poor, asset poor and consumption poor. The poverty is seemingly feminized in South Asia and, as such, constitutes one of the 'major sources of violence against women'. Poverty is a cause of subordinating women at home, market and public life. It ostensibly disables women to assert their human dignity and, thus, renders them vulnerable to all forms of subordination and exploitation. A poor woman is exposed to danger of being sexually exploited, sold in market, used in pornography and prostitution, and used as a commodity. A poor woman is easy prey of crimes; the sexual harassment, domestic violence, rape and trafficking. The looming poverty sustains the cultural violence and degradation of women's personality; women's personality is defined either in terms of marital status or sex.¹⁶⁰

The problem of violence against and subordination of women is equally intensive and severe in all South Asian countries. Unfortunately, the recent economic growth and reforms in development policies have made no substantial changes on lives of women. The reduction of

¹⁶⁰ In Nepal, for example, a woman is 'recognized only by her marital status, for instance a married woman, a single woman, unmarried woman, married wife, unmarried wife (kept), etc. The term woman 'does not represent all women without an adjective signifying their marital status. The *Muluki Ain* (National Code) is framed accordingly.

poverty level in South Asia has rare impact on lives of women. The regressive status quo on relationship between men and women is still at large. The role of law to address this problem is insignificant.

Rural poor and poverty: Over the past one decade, the total number of poor, despite some reduction in poverty rate, has increased significantly. The state of rural poverty has gone from bad to worse. The rising income inequality, fueled by rapid growth of income in urban service sector and resultant benefits to urban middle and higher classes, has tremendously contributed to the increase of poverty level as well as its severity in rural areas. The problem of feminization of rural population is likely to negatively affect education, employment and other services in rural areas. The intensification of rural poverty has, thus, posed interface with increasing problem of violence and insurgency.¹⁶¹

Characteristically, the economic growth in South Asia, India in particular, is mainly confined to limited service sector in urban areas and its benefits are limited mostly to the middle and higher classes which are equipped with education and skills for long period of time. The contribution of elitist service sector in 'generating employment for rural labor force' is extremely limited. Hence, the ongoing economic growth in South Asia is rather contributing to rise of unemployment rate.¹⁶² The so-called economic growth is, thus, not development as it has obviously failed to address the 'regressive status quo' to which the vast majority of the rural population is subjected to. The so-called economic growth has nothing to contribute to the 'protection of human rights of vast majority of the population in the rural South Asia'.

As commonly understood, the growth of economy is meant as a state of added foreign investment. As it is plain from face itself, one of the reasons in rapid growth of economy in South Asia today is the surge of Multinational companies alone or their partnership with

¹⁶¹A classic example is the 'intensification of Naxalite insurgency in India'. Nepal is another example, which underwent a devastating conflict since 1996 to 2006. The rapid rise of inequality in India between urban and rural sectors with concentration of economic benefits in cities like Mumbai, Bangalore, Chennai, Delhi and so on, India has now distinctly divided between 'traditional poor rural India and modern rich urban India'. The rural poverty is intensified, which is providing a justification as well as breeding ground for organized violence. The ideological base of Naxalites is founded on liberation of workers and poor peasants. The Naxalites have formed a 'red corridor' that comprises of eastern and central provinces of India plagued by poverty and other associated problems like illiteracy, poor health facilities, unemployment and several other hardships of life. In these provinces, the Naxalites have been consistently claiming that they are fighting on behalf of the landless poor, unemployed youths and those suppressed by the State (See Willaima Magioncalda, "A Modern Insurgency: India's Evolving Naxalite Problem" in South Asia Monitor, 08 April, 2010: Center for Strategic and International Studies (CSIS). At on line: http://csis.org/files/publication/SAM_140_0.pdf

¹⁶² Human Development In South Asia 2007 at Ch. Overview

national companies. The Indian economic growth is particularly marked by this character, which has of course contributed to achieve two digits' growth rate. Unprecedented surge of MNCs has generated a tension between the Government and the rural population. The surge of MNCs and government's liberal policies regards them has already seen an increased intensification in violent conflict in the society. A decade long Maoist insurgency in Nepal and the rising Naxalite movement in several provinces in India can be taken as best examples of this new development. Such movements have found a leverage and justification in widening gap created by the income inequalities between rich and poor sections; rural and urban areas.

In the past two decades, the governments in South Asia, particularly in India, the biggest economy in the region, in a rush of pumping their ailing, lethargic and traditional economy did favorably open the doors for MNCs that are allegedly involved in notoriously robbing the resources and labor of the poor citizens. While their engagement could be welcomed if they had been rendered ethical in their business, the failure of the government to place them within the bound of precisely defined regulatory system has serious consequences. In absence of precise policies to control such enterprises in view of broader 'public interests' and urgency to look into basic needs of the vast rural majority of the population, the MNCs are found robbing the labor and resources with no price. MNCs are responsible for displacement of people by utterly violating the sovereignty of people over natural resources. The MNCs' unlimited extraction of natural resources and ensuing problems of displacement is increasingly becoming a source conflict between 'local people and the government'. The wider culture of corruption and valueless politics in South Asia has made governments fall in the trap of MNCs. The natural resources are being sold by governments in no price to MNCs for the private gains of the political leaders and bureaucrats.

Suitable example is the problem of Indian state of Orissa. In this State, the provincial government, against the background of underdevelopment, endemic poverty and hardships of life faced by millions of rural people, jumped up to embrace neo-liberal policies of development with open arms and hearts. As a result, from early 1990s, MNCs and big national companies (BNCs) are engaged in a race of installing extractive industries such as mining. The government signed 46 memorandum of understanding with MNCs and BNCs to let them extract mines and similar resources with no consent of local people. These companies, in disregard of the interest of local communities and their sovereignty over natural resources, grabbed 75-80 percent of the

lands where tribal people had been living in. The government gave such lands to MNCs and BNCs that were customarily occupied by tribal people for generations. In this wake, the so-called development drive not only legitimated the exploitation of labor in cheap wage but also violated the sovereignty of people over natural resources and ensued displacement of almost 100 percent of tribal population. Obviously, these people have now become landless.¹⁶³ It is now obvious that Orissa is, today, one of states worse hit by the emerging Naxalite movement.¹⁶⁴

India was able to dampen the Naxalite movement significantly in 1971. With inception of the new millennium, it is increasingly escalating. The escalation corresponds with India's huge macroeconomic economic growth and this is not merely coincidental. In the past two decades, the economic boom has given almost 100% rise of per capita income in India. MNCs have sustained this growth by pumping billions of dollar to invest in it. But the rain of this growth has not trickled down in rural areas and less developed Northeast states. The new economic phenomenon has engendered a wider gap between rich and poor people and this emerging inequality of income between rich and poor has given a new political leverage to the Naxalite movement which is increasingly gaining momentum in the Red-corridor area.¹⁶⁵ The rising movement has been a serious political issue in India and neighboring nations like Nepal, Bhutan and Bangladesh. While India looks on Nepal's Maoist insurgency as a catalytic factor for the 'reemergence of the Naxalite movement' and takes Nepalese Maoist movement as a threat to the India security, it is largely a 'misconception of the India policy makers'. The emerging high-profile of Naxalite movement in India is an outcome of 'ill-governance' plaguing Indian

¹⁶³ Ruchi Yadav "Impact of Mining in Orissa: Development induced displacement" in *Development and Human Rights- Asian Human Rights Defender*, Third Quarterly, 2006. Forum Asia: URL, www.forum-asia.org

¹⁶⁴ Naxalite movement is a 'radical communist movement' which avows for establishment of a proletariats regime by violent conflict. The movement emerged in 1960s in a small village called Naxalbari in North Bengal had gone to low profile during 1990s. It has now taken a high profile shape in the "Red Corridor" area. The movement has now grown to an extent that it is able to cause serious concerns of the central Government of India.

¹⁶⁵ 'Red corridor' includes states in the coast of Bay of Bengal (Bengal, Orissa, Andhrapradesh) and adjacent states like Bihar, Jharkhand, and Chattistgrah. Poverty is extreme in these states. They have remarkably low per-capita income, compared to other states but abundance of raw materials (minerals) in their hills and forests. Fred Burton and Ben West in Blog "Rofasix" with a title "India's Eastern Naxalite Insurgency" (09 July, 2010) have rightly remarked: "... state of India has been hard-pressed to get at those resources because it cannot effectively control them. Eager to stimulate growth in the region, the central government promised foreign investors land without communicating, much less negotiating, with locals inhabiting the lands, which naturally led to disputes between the locals, the foreign companies and the government. A famous example of an ongoing dispute involves the South Korean Steel conglomerate POSCO, which is in the process of acquiring 4,000 acres in Orissa state on which to build a \$12 billion steel mill". See at online: <http://rofasix.blogspot.com/2010/indias-naxalite-insurgency.html>

politics. Candidly speaking, the existing Indian governance system mixes ‘traditional elitisms,¹⁶⁶ neo-elitism, criminalization of politics¹⁶⁷ and emerging control of economy by MNCs and BNCs backed by penetrating state of corruption in the state machinery’.

Education and poverty: Despite significant improvements in overall literacy rate, the South Asian nations continue to be one of the most uneducated and illiterate regions in the world containing around 379 million illiterate adults¹⁶⁸—the highest absolute number in the world. India and Pakistan two largest economies with remarkable increase in per-capita represent countries in South Asia having the largest number of out-of-school of children in the region and the world. The rise of per-capita income at national level, thus, has very less significance to those huge masses in rural areas and shanty towns who are unable afford education for their children. The existence of huge uneducated mass implies a state of ‘unproductiveness’ of the population as well as mammoth state of deprivation. No protection of humans in such a state is possible as ‘ignorance and deprivation’ are the components of sustainability of regressive status quo.

Malnutrition, health, deaths and poverty: Looking at South Asia from perspectives of health indicators, the situation is scary. Women and children are the most vulnerable groups. It is

¹⁶⁶ Indian politics has not yet been able to get rid of ‘dynasty and patronage’ syndrome. Most political parties, except some left and socialist backgrounds having no decisive role in Indian politics, have maintained a dynastical succession system. This dynamic of Indian politics helps in continuity of the ‘traditional elitism’ in politics, which exists in politics mainly for the power. It has been a source of ‘continuity for regressive status quo’. In this type of political bastion, the wealth becomes the source of political power. For more detail see at “criminalization of politics”: www.legalserviceindia.com/articles/editorials/htm

¹⁶⁷ A remark presented by the research report of the National Law Institute University at Bhopal is worth mentioning: “Criminalization of politics has become a headache for the Indian democracy. It is shameful to admit that in the world’s largest democracy the cult of the gun prevails. *Goondas* and criminals are hired to capture booths and political rivals. In this way the entire democratic process is negated”. See at “Criminalization of Politics in India: A Study of Politicians in the 15th Lok Shava with criminal records”; National law Institute University, Bhopal. There are several studies conducted in this regard. A part of another study reads: “The elections to Parliament and State Legislatures are very expensive and it is a widely accepted fact that huge election expenditure is the root cause for corruption in India. A candidate has to spend *lakhs* of rupees to get elected and even if he gets elected, the total salary he gets during his tenure as an MP/MLA will be meager compared to his election expenses. How can he bridge the gap between the income and expenses? It is plain, through donations in eyes of public but secretly through illegal means. The expenditure estimation for an election estimated as Rs 5 per voter as election expenditure, for 600 million voters, and calculation of all the expenses in a general election estimated around Rs 2,000 crore. Then there is the period between elections. This requires around Rs 250 crore. Then there are state elections and local elections. All told, the system has to generate around Rs 5,000 crore in a five year cycle or Rs 1,000 crore on average each year. Where is this money to come from? Only criminal activity can generate such large sums of untaxed funds. That is why you have criminals in politics. They have money and muscle, so they win and help others in their party win as well. See at www.legalserviceindia.com/articles/editorials/htm

¹⁶⁸ Human Development In South Asia 2007 at 2

painful to accept that the ‘indicators’ have failed to show improvement in the sector of health in South Asia. South Asia even today is the most malnourished region in the world and it continues to remain so even after its massive economic growth over the last two decades. India and Pakistan possess the largest population in this sector too. Most shockingly, the number of malnourished people is further increasing. In the past decade (from 1995-2005), the total number of malnourished people in the region increased from 290 million to 299 million; it implies that despite impressive rise in the per-capita income 9 million people are added in the category of having no adequate nutritious food.¹⁶⁹

Unemployment and poverty: Like other sectors of low performance, the sector of employment and actual poverty reduction sectors record no progress. No positive trends in rise of employment rate are seen in India despite its approximately 9 percent rise in GDP. The growth rate of employment rather declined from 2.7 percent in the past one decade to 1.07 percent per year till 2000, thus, indicating that the economic growth has failed to benefit the large section of the population. It means that the ratio of unemployment has dramatically increased; it is approximately 8 percent for male working force. It remains around 9-12 percent for female. The gender gap in wages is a problem too. Most importantly, the youth unemployment continues to be the largest one.¹⁷⁰ The situation of Pakistan, Bangladesh, Nepal, and Sri-Lanka is further worse. In Pakistan, there has been gradual erosion of the consumption share of the lowest 20 percent of the population,¹⁷¹ and in Nepal it is shameful as the lowest 20 percent receives only 5 percent of the total GDP.¹⁷² The instances of Pakistan and Nepal provide a glaringly shameful paradigm of increasing inequality between so-called higher classes and bottom/lower classes population groups. Land constitutes the primary mean of support and employment in South Asia. In Pakistan, for example, two thirds of the rural households are landless.¹⁷³ The situation in India, Nepal and Bangladesh is hardly better than Pakistan. The lands are grabbed by a small elite population.

¹⁶⁹ Human Development In South Asia 2007 at 3

¹⁷⁰ *Ibid* at 4

¹⁷¹ *Id* at 3

¹⁷² Martinussen, John, 1995, *Democracy, Competition and Choice: Emerging local self-governance in Nepal*, Sage Publication, New Delhi, p. 35

¹⁷³ Human Development In South Asia 2007 at 2

Income distribution and poverty: Uneven income distribution is a serious problem in all South Asian countries. The ‘magnitude of unevenness’ in distribution has increased in recent years. The unevenness is reflected in size of the land holding, gender, income level and social position. In Nepal, for instance, the lowest 20 has access to merely 5 percent of the GDP. Being a women from Dalit community, especially from the western remote districts, accounts for most serious deprivation. The income distribution is painfully abject in the case of Dalit women.

The recent economic growth in all South Asian countries is concentrated in urban areas, and hence has mostly benefited the urban middle class that is already well equipped with education and skills.¹⁷⁴ The income distribution led disparity in the wake of macroeconomic growth rate in recent years has ‘made the traditional structural violence more acute’ and it consequently has sharply divided the South Asian societies. The rise in the number of violent conflicts in the recent past can be attributed to this factor. As pointed out by the South Asian Human Development Report, 2007, ‘the ratio of income, on average, of the richest 20 percent to poorest 20 percent has gone up from 4.3 percent in 1990-96 to 5.5 percent in 2000-05. This ratio in the recent past has gone up further. In fact, this paradigm of increasingly widening gap has:

- dulled the impact of economic growth on poverty reduction,
- intensified the conflict by widening the traditionally existing ‘structural violence’,
- has added to the state of marginalization of excluded groups,
- many more people have fallen in the poverty trap, and
- caused implausibly bigger number of youth to migrate across the border in search of job.

All these consequences are indicators of a fact that ‘the recent economic growth has been less humane’ in result. It has in fact intensified the risk of human rights violation. The widening income gap between poor and rich and city and village is likely to intensify the risk of violence, which constitutes a major factor for defilement of democratic governance. The income disparity is a curse for democracy itself.

Moreover, the economic growth has occurred mostly in the service sector. The contribution of the service sector in the GDP has gone up from 45 to plus 54 percent in the past 15 years. The contribution of agriculture sector has declined from 28 to plus 19 percent in the same

¹⁷⁴ Human Development South Asia 2006

period. The contribution of industry has remained stagnated at around 27 percent.¹⁷⁵ Given the fact that industry is considered to be the backbone of any economy, it seems that the growth of economy, with deterioration of agriculture sector and stagnation of industrial sector, mainly confined to service sector is pro-elitist, thus posing a serious threat to marginalization of extremely large part of the population. It is now plainly visible that in South Asia, with most rural poor dependent upon agriculture as the main source of livelihood, the stagnation in agriculture growth and productivity could precisely be one the reasons why poverty has gone up in rural areas of almost all South Asian countries. This fact itself shows an immensely big risk of human rights violation and failure of so-called formal democracy in South Asia. This fact also shows another fact that the South Asian governments are miserably failing to understand the ‘meaning of development’. The discourse amply suggests that ‘human security’ is not what development means for the South Asian governments.

Crisis of governance: Governance is an issue of constant discourse in all forms of Diasporas in South Asia. Is there governance at all? People are skeptical to answer this question as “yes”. Corruption, nepotism, plunder of public assets and violation of rule of law are serious problems faced by South Asian societies. Constantly swelling problem of criminalization of politics and politicization of crimes has further worsened the confidence of people over governance.

The structure and functionality of governance in any society are matters closely associated with the system of politics adopted by the society. Governance in any society is an instrument necessary to facilitate development process and the ultimate goal of it is to build human capabilities along with enlarged human choices in order to create a safe and secure environment conducive for dignity and equality in citizens’ lives. In a democratic setting, a system of governance is an instrument of ‘development’ to break the vicious circle of ‘regressive status quo and structural violence’. However, in South Asia the governments in the region are rejecting or declining to practice the progressive notion of governance that promotes people’s freedoms and participation in policy or decision making process. For South Asian governments, democracy is hardly more than a majoritarian system of representation and adult franchise-based election. Anti-democratic and human rights legacy, partly inherited from past feudal status-based structure of governance and partly inherited from colonial divide and rule policy,

¹⁷⁵ *Ibid*

is responsible to create this 'psyche of democracy' that negates or cripples the notion of progressive 'governance system', thus, helping the continuity of the vicious circle of 'regressive status quo and structural violence'.

Continuation of 'regressive *status quo*' to prevent change and progress is a characteristic notion of the South Asian governance system. With no doubt, development is a 'phenomenon' of change. As a matter of fact, to resist change would simply imply nothing but a 'deceptive design to protect and preserve the state of regressive status quo'. In such a state, the prospect of development as an instrument of socio-economic transformation into lives of people is fully discarded. In South Asia, the governments are, thus, instruments of 'regression' rather than 'progression'. The 'regressive status quo is characterized in South Asia by:

- practice of 'legal system' which is essentially congenial to colonial system. It was introduced by the colonial rulers to 'maintain their interests', but not for the benefits of indigenous people. After more than five decades of colonial rule, the legal system, however, is in place. The legal system is found on the notion of 'utter formalism', which implies that rules are sacrosanct. The legal system practiced in South Asia is structurally unfriendly to 'equity-based change and protection of human rights'. The formalist conclusion drawn by formalist interpretation of the century-old rule is commonly known as 'justice'. The recognition of the inviolability of the physical integrity of individual, security of person, supply of sustenance needs, respect to freedom of choice and action and guarantee of economic participation' do not figure important while carrying out the interpretation of the rules of law
- the legal system is lacking a framework congenial for 'engendering the human rights threshold condition'. Individuals have no justiciable right to 'food, cloths, health, housing and sanitation'. These rights of people are considered as 'development privileges of the State'. Human rights are, thus, separated from spheres of development affairs
- the tax system is largely informal. Only a very smaller section of society is taxed. The informal tax system, basically in the form of fee, royalties, service cost, etc. constitute major source of revenue in South Asia, which, in fact, puts the poor people into tax traps. The South Asian economy is, thus, basically based on what is paid by the poor

- forms of inequality in service and social security is discriminatory. The education system is a glaring example. The government schooling system is not only inadequate; the quality provided by the schools is incredibly poor. The privatization of the schooling is a policy priority of the South Asian governments. The affluent families benefiting from the recent growth of economy can afford the costly privatized schooling, and the poor are forced to lag behind due to non-quality education. The type of disparity in policies is pervasive
- criminalization of politics is a rampant character in South Asia. Democracy is, thus, a myth.

Plainly enough, these characters of governance system in South Asian are obviously promoting and protecting a state of ‘regressive status quo’ that defies ‘equity-based transformation’ of the society. It is now increasingly accepted that the main causes of the South Asia’s colossal human deprivation are not related with economy but politics, i.e. the system of governance. The structure of ill-governance is pervasive and phenomenal. It has deeply institutionalized poverty by persistently denying ‘equity-based distribution’ of resources and opportunities.

The positive opposite of ‘the state of regressive status quo’ is ‘an endeavor for progressive change or transformation into traditional paradigm of people’s lives’. The concept of ‘progressive change for transformation’ embraces a right-based approach for development, and the development, in turn, necessitates an active interplay of ‘economic growth and good governance’. It means that ‘system of pro-people governance and development’ form an interface. Unfortunately, South Asia has in the past heavily suffered from bad or regressive governance system and anti-people policies of the governments. It continues to suffer from the problem even today. While South Asia structurally is a fully democratic region at present,¹⁷⁶ the performance of the governance system continues to remain poor, traditional and

¹⁷⁶ Nepal and Bhutan were the two monarchies that transformed into democracies lately. Nepal, however, suffered heavily from Maoist insurgency over a period of one decade. In 2006, the conflict ended with a great hope of people to progressive transformation of the society. Nepal was seen by South Asian people with great hope. However, the poor performance of political parties, including Communist Party of Nepal (CPN) Maoist, that waged a revolution for change, failed to give effect to the aspirations of people. They rather acted to ‘continue the state of *regressive status quo*’. Political leaders of Nepal are now regarded as obstacles for change. In a country with per-capita of 275 USD, the luxury they are living with is a best example of the anti-development poor governance. Today, the political parties are busy with criminalizing politics and politicizing crimes. Impunity is a rule in Nepal. Criminals are holding post of members in the Constituent Assembly. Political parties have raised ‘semi-armed’ organizations to terrorize people. The state exchequer is plundered by political parties. Violence is legitimated.

regressive.¹⁷⁷ It is rightly described by someone that ‘South Asia remains a region divided—divided between the hopes of the rich and despairs of the poor; a region where the richest one fifth enjoys almost 40 percent of the income, and the poorest one-fifth makes survival with less than 5 percent of the income. This is a region where 559 million people struggle for survival every day. Nearly one in three is poor, and two third of these poor are women.’¹⁷⁸ The poverty constitutes a major cause for early death, diseases, exploitation and violence in Asia. As early in 1940s, Mahatma Gandhi, the main architect of the Indian independence or British Quit movement', reflecting on poverty said: "Poverty is the worst form of violence".

Poverty, as a source of violence, is both the cause and consequence of human rights violation in Asia. This is the main point which demands critical assessment of the governance systems of South Asia as it has widely been felt that the governance systems of South Asia are facing a chronic crisis with not much hope for change in the future. The signs of the crisis can be found:

- a. in continuity of race for ‘nuclear capacity building’ between India and Pakistan which apparently threatens peace and tranquility of the region and contributes to rise of spiraling tensions and conflicts among the members of the region, including unsustainable military cost;¹⁷⁹
- b. in criminalization of politics and corrupt practices of politics that have largely defused the trust of people over the state’s institutions, including judiciary;¹⁸⁰

¹⁷⁷ Nepal and Bhutan were the two monarchies that transformed into democracies lately. Nepal, however, suffered heavily from Maoist insurgency over a period of one decade. In 2006, the conflict ended with a great hope of people to progressive transformation of the society. Nepal was seen by South Asian people with great hope. However, the poor performance of political parties, including Communist Party of Nepal (CPN) Maoist, that waged a revolution for change, failed to give effect to the aspirations of people. They rather acted to ‘continue the state of *regressive status quo*’. Political leaders of Nepal are now regarded as obstacles for change. In a country with per-capita of 275 USD, the luxury they are living with is a best example of the anti-development poor governance. Today, the political parties are busy with criminalizing politics and politicizing crimes. Impunity is a rule in Nepal. Criminals are holding post of members in the Constituent Assembly. Political parties have raised ‘semi-armed’ organizations to terrorize people. The state exchequer is plundered by political parties. Violence is legitimated.

¹⁷⁸ See Anselmo Lee, et al, (ed.) "Poverty and Human Rights" in "Linking Development and Human Rights"; The Newsletter of the Asian Forum for Human Rights and Development, Vol. 2 No. 3, Third Quarter 2006. Forum Asia, Bangkok.

¹⁷⁹ As discussed in the introduction part, India and Pakistan are two nuclear powers in South Asia with legal missiles with capabilities to destroy the over 5000 year long South Asian civilization. A huge part these countries’ scare revenue goes to maintain and buttress their nuclear strategies and schemes.

¹⁸⁰ Governments of all South Asian nations have blatantly failed to rescue the politics from the grip of criminals. It seems that, the political parties of South Asia are gradually transforming into the parties of criminals, smugglers, mafias and gangsters.

- c. in constant institutionalization of violence in politics and ‘feudalization’ of political parties, which promotes patronage and hereditary succession in political parties;¹⁸¹
- d. in incessant political demonstrations and strikes which regularly affect the economic, educational and productive activities;¹⁸²
- e. in terrorism and inhuman blasts, detonation, ambush and firings which takes lives of hundreds of innocent children, pregnant women, workers and tourists;¹⁸³
- f. in corruption and political maneuverings for search of powers;¹⁸⁴ and

These signs of crises indicate adequately that in many South Asian states democracy has turned into an empty ritual;¹⁸⁵ elections are taken often as means or bridge for political leaders to legitimize their access the State’s powers. Over the years, the South Asian people are left helpless; excluded from the larger political process which directly affects their livelihoods and way of life.¹⁸⁶

The South Asian governments are expensive. They are large but inefficient. The cost of government overrides much essential expenditure. As late as 1995, some studies reported that per-capita government expenditure in South Asia was \$56 even as the number of people living in poverty swelled to 559 million. The governments in South Asia consume some 10 percent of the GDP¹⁸⁷ whereas the 20 percent poorest people have only a share of 5 percent in the GDP.¹⁸⁸ It is a dire paradox.

¹⁸¹ Nepal, India, Bangladesh and Pakistan are obvious examples. It is a patronage and ‘factionalism’ is two characteristic features of the political parties in these countries. The political ideology, conviction, and contribution in democratic performance of political parties are seen as ‘disqualifications’. No person can hold the highest office of the country without having connection to a certain clan or having patronage of this or that clan. Lately, the criminalization of politics has seen as a serious problem of politics in South Asia. Nepal is its blatant example. Despite being identified as criminals or engaged in criminal activities, the political parties of Nepal have given space in politics for such persons. Indian politics is criticized for the same for long time.

¹⁸² Bangladesh and Nepal are examples for strikes for continuously for a longer period of time.

¹⁸³ Problems in India and Pakistan are now serious enough.

¹⁸⁴ Corruption is plaguing democracy and governance of South Asia seriously.

¹⁸⁵ Nepal is the worst example. Mr. Madhav Kumar Nepal, a person who lost election from two constituencies, was elected Prime Minister. Majority of ministers in his cabinet, especially from his party, were persons rejected by people in election. Mrs. Sujata Koirala, who have never been elected as a member of the parliament nor has she been elected in important post of the part, got appointed as deputy Prime Minister simply because she was a daughter of Girija Prasad Koirala, one of the former Prime Minister of Nepal. In Nepal, a care-taker government continued for several months simply because the ‘Constituent Assembly’ could not elect the Prime Minister. Enough to be a farce, the CA held elections more than a dozen times. However, the candidate of Nepali Congress did not withdraw from the contest even there was no chance for him to be elected. In Sri-Lanka, the president moved a proposal in the Parliament to amend the constitution with an effect to allow him to contest the election again in future. Similar stories are found in abundance in India, Pakistan and Bangladesh.

¹⁸⁶ Human Development in South Asia 1999: The Crisis of Governance; Oxford University Press.

¹⁸⁷ Human Development in South Asia 1999: The Crisis of Governance; Oxford University Press

The corruption is phenomenal. One of the reasons for phenomenal corruption is overwhelming domination of the Government in all functions of the State. The South Asian Governments are directly engaged in activities of development expenditures. As rightly pointed out by 1999 Human Development Report, the over indulgence of the Governments has limited their ability of focusing on the essential takes of service delivery and productivity enhancement. The overindulgence in expenditure activities is also major cause of notoriously high levels of corruption. This skewed governance stood on inefficiency and corruption is a cause of many severe consequences. The tax collection, for instance, is an example; it is so meager, hardly one percent of the population pays income tax.¹⁸⁹ South Asia collects around 10 percent of GDP in taxes, compared to the average tax revenue collections 15-20 percent of GDP in developing countries.¹⁹⁰ Yet, a bigger irony is that most of these taxes fall far more heavily on the poor and lower middle class than on the rich. Nearly seven percent of the tax in the region is collected through levying indirect taxes.¹⁹¹ Most pathetically, even the low levels of revenue that governments collect largely fail to materialize into pro-poor expenditure.¹⁹² Finally, the ability of South Asian governments to deliver the most basic goods is further weakened by endemic corruption.

Poverty and human security: Human security is a 'guarantee of life and liberty against violence of any kind and disruption by societal injustice or natural calamities, and adequate provision for food, health, education, employment and good environment'. In short, human security is a condition of the fulfillment of economic and social needs of people. Territorial security, which is mainly concerned with protecting national borders, is meaningless for people if they are

¹⁸⁸ John Martinussen, 1995 at 35

¹⁸⁹ Human Development in South Asia 1999: The Crisis of Governance; Oxford University Press, p.4

¹⁹⁰ *Ibid* at 5

¹⁹¹ A few instances of Nepal, for example, will make it clearer. In Nepal, the Government of CPN (Maoist) imposed 5% tax for educational institutions privately run. The educational institutions to meet the tax raised the tuition fees by 10 percent. Indirectly, it was fee imposed on education; a student paid tax to the government to obtain education. Similarly, the Government is levying tax on 'lands'. Even the smaller farmers who barely produce enough to support their livelihood are thus taxed. It can be said that 'poor farmers are taxed to survive'. By contrary, the government has fixed a slab of Rs. 150,000 for exemption of income tax. It is thus argued that 'rich are taxed on luxury' and poor are taxed for survival.

¹⁹² In South Asia, the bulk of public spending is directed away from social and development opportunities towards providing non-merit subsidies, making up for losses of public corporations, maintaining a large force of civil servants and providing for external defense. With notable exception of Maldives, social sector expenditures (like school education) in South Asia remain low at less than 5 percent of GDP. Large proportion of expenditures is spent on low human development priority areas. For instance, for every dollar spent on social sector, Pakistan and India spend 4.32 and 1.70 dollars on defense and debt servicing, respectively. See Human Development in South Asia 1999: The Crisis of Governance; Oxford University Press, p.5

hungry, sick, jobless, or are violated or killed by oppressive systems, practices, and corrupt state institutions.

South Asia faces serious problems in this regard. Countless people are deprived of food, health, education, and jobs. For these countless people huge standing army and nuclear weapons mean nothing. Unfortunately, most South Asian states are persistently resisting the idea of recognizing human security as ‘a fundamental right’ of people by their constitutions.¹⁹³ The overall situation of human security in South Asia is in a very pernicious position. South Asia is a region where people die in all seasons, by all diseases and fall in trap of all kinds of adverse conditions. The wrong economic policies of the Governments are major factors throwing people into a state of added vulnerability. As discussed abundantly hereinbefore ‘the South Asia’s economic growth has created some oasis of affluence and security for a small group of people. But the deprivation of a huge absolute number of people in all walks is creating social turmoil across the region’. The so-called growth itself has become a source of threat to human security. Ongoing conflicts and many more factors that escalate conflicts between states and different groups within a state are other forms of threat to ‘human security’. The widespread structural violence is a major source of conflict between different groups within a state. Increasing poverty and income inequality between the ethnic, social and religious groups set the stage for outbreak of violent conflicts. To put concisely, poverty and widening income inequality, food insecurity, the changing nature of employment and unemployment, against the backdrop of greater global economic integration, underline the human security vulnerability of South Asia.¹⁹⁴

IX. IMPLICATIONS OF POVERTY ON HUMAN RIGHTS: ANALYSIS OF POVERTY AND HUMAN RIGHTS VIOLATION TRENDS

It is plain from the foregone discussion that the South Asian nations manifestly hold similarities in types, consequences or impacts and dynamics of poverty, at least at macro levels. In micro-levels, however, there is divergence in situations. In this article, no serious attempt is made to explore individual nation's micro-realities of poverty and its nexus with human rights

¹⁹³ None of South Asian Constitutions has incorporated ‘right to food, health, education and job’ as an enforceable fundamental right. In 2007, Nepal’s Interim Constitution included these rights as fundamental rights, but unfortunately subjected their enforcement to legislation.

¹⁹⁴ Human Security in South Asia; Oxford University Press for The Mahabub ul Haq Human Development Center, 2005; p 6

violation. It has rather given a regional perspective of causes and impacts of poverty and deprivation. An attempt has been made to

- a. explore inherent dimensions of poverty as a cause of human rights violation ;
- b. investigate the nature of interface of poverty and other issues such as illiteracy, discrimination, disenfranchisement and exclusion, and its impacts on human development as well as the realization of human rights ;
- c. examine the impacts of poverty on enjoyment of liberal democratic rights by people ; and
- d. scrutinize the impacts of poverty on sustainability and institutionalization of democracy.

The overall impacts of poverty and deprivation at macro-level is similar in all countries. The ill-governance is a major factor for continuity of the mammoth poverty in the region. Wrong economic policies, huge governmental expenditure, huge expending on military out-fits, poor tax regime, corruption, increasing state of criminalization of politics, and power-centric attitude of politicians are macro-level factors prolonging the state of poverty, deprivation and ensuing inequality among population in the region. These factors obviously engender a 'state of lawlessness'. The legal systems in the regions are rudimentary and hardly play a role in elevation of human development. In developing societies, the role of legal system in uplifting individuals' position at 'threshold condition of human rights' is crucial. However, the same is obscure in the region as the prevailing legal systems are congenitally colonial and functionally formalist. They embody feudal characters and are prone to preserve the 'conventional hierarchical structure' of the society, and, hence, promote 'regressive status quo' against progressive transformative change. The legal systems are enforced largely to protect the interests of economical, political and bureaucratic elitism in the society. As a matter of fact, the development role of law is insignificant. The poor state of the legal system in the region is thus buttressing the 'ill-governance and other vices' obviously thwarting the prospect of equitable human development. The enforcement of international human rights in such a perspective is very challenging mission.

X. DIMENSIONS OF POVERTY AND THEIR IMPLICATIONS ON HUMAN RIGHT: SOME THEORETICAL SETTINGS

To provide a basis for 'critical analysis of the problems relating to human security and development in South Asia', the following guiding principles can be set forth:

- a. It is assumed that 'human rights' normatively constitute a composite system of 'human security' by which every individual's 'human dignity' is shielded against any form of violence or disruption, and wants or adverse conditions that pose threats to survival and dignified existence. Human rights thus, as core values, underlie all activities, policies and programs of states, non-state entities and individuals.¹⁹⁵
- b. Human rights constituting a 'composite system' of human security provide the source of legitimacy or legality for all other systems that operate for benefits of human beings. State's policies and programs failing to respect human rights should therefore be viewed as 'threats to human security'. State's activities that place human security, directly or indirectly, into a crisis or threat must be condemned as human rights violation. The excess of powers or authority hence must be strictly prevented.¹⁹⁶
- c. Consequently, the duty of every human individual and institution to ensure the realization of human rights is unlimited, unconditional, and immovable in any circumstance. No argument of any one, including state, can be acceptable which makes the 'realization' of human rights contingent upon 'some perceived or real claims' of national security or interest. Hence, no excuses for human rights violation in forms or pretexts of threat to national security can be acceptable to a society that is marching to a new civilization. No arguments justifying inefficiency or deficiency causing failure to protect and preserve human rights can be tolerated either.

As the foregone discourse amply sheds light, poverty amounts to the degrading form of human rights violation. Poverty is a deprivation of basic needs of human beings and it flouts the prospect of a dignified life by effectively blocking the process of progress in prevailing human conditions. The deprivation caused by poverty engenders deplorable state of vulnerability to the physical integrity, security of person and liberties. The State's duty to protect human rights is absolute, thus, to have a dignified life with access to all basic needs is a fundamental right of every individual.

The importance of human rights largely rests on their ability to enable the enjoyment of minimally satisfactory life or what J.S. Mill calls "the ordinary chances of desirable

¹⁹⁵ (All ancient traditions asserted these values –to be elaborated from HRSs power point presentation).

¹⁹⁶ Elaborate the doctrine of 'public interest, people's sovereignty and state's authority' - the new concept of law that it prevents states to violate people's freedoms

existence".¹⁹⁷ To meet the threshold condition of human rights is, thus, a mandatory obligation of each state. States can have no excuse under any circumstance for meeting the threshold condition. The right to life, dignity and basic liberties, such as freedom of choice, action and movement, generally constitute 'the minimum threshold condition', to which States have an absolute obligation to protect and enforce. At this point, States have an obligation to remove all those laws and other impediments that hinder satisfaction of the 'minimum threshold condition'. Failure of States to meet the 'threshold condition' means a denial to protect human rights, and the denial amounts to 'violation of human rights'. The violation of human rights amounts to be crime by State 'if it is paradigmatic' in nature.¹⁹⁸ A paradigmatic violation is that which do not merely deprive victims of the objects of their rights but systematically attack these very rights themselves; it does not merely subvert what is right, but the very idea of 'right' and justice.¹⁹⁹ To say concisely, failure to meet the 'threshold condition' entails a violation of human rights with no doubt. Poverty and deprivation thus epitomize 'a paradigmatic' violation of human rights as the state of poverty and deprivation represents 'a state below the threshold condition'. States' attempt to flout obligation to address poverty and deprivation is tantamount of legitimization of the 'crime of human rights violation'.

Individuals' rights to development prevent States to commit paradigmatic violation of human rights and ensuing crime. To say other way round, individuals' rights to development is an instrument of compelling States to 'meet the minimum threshold condition' of human rights protection. The right to development rescues individuals from a state of 'regressive status quo' epitomizing poverty and deprivation. Eradication of poverty and deprivation is thus an 'inalienable obligation of States as well as international community'. The following justifications help to establish this principle:

- a. Poverty is an outcome of 'the state of income inequality, hence violation of human rights by States and international community'. The income inequality, on the other hand, is a result of the ill-governance, or an outcome of the failure of public system, the political apparatus in particular, and its wrong policies and decisions. International suppressive polices on trade, protectionist exemptions insisted upon by developed countries, international resource privilege and culture of luxury in internationally funded projects fuel ill-governance and

¹⁹⁷ John Stuart Mill, *On Liberty*, ed. Elizabeth Rapoport, Indianapolis; Hackett (1858) 1978

¹⁹⁸ Thomas Pogge, 2002 at 29

¹⁹⁹ *Ibid* at 59

corruption poverty stricken societies. Poverty and deprivation destroy a normative value that 'human lives are equal and every human life has its equity on advantages secured or provided by the State he/she is a citizen of'.

- b. Human rights collectively constitute an 'entity' that guides each and all functions of public institutions, without sparing the State and international community. Both the system of democracy and governance derive legitimacy by success in protection and preservation of 'human security, liberty and dignity'. Protection or preservation of human dignity is an 'advantage obtained or acquired by individual that ensures his or her security' against all forms of wants, violence or disruptions. Human rights in this form constitute a set of mandatory obligations of States and international community to 'ensure human security'.
- c. No State or international body has thus power or privilege to set a priority for 'development project' that negates human security and liberty. No national defense or security system has meaning for hungry people. State's priority to build military outfits or defense system against its 'perceived threat' of security lacks legitimacy in view of its citizens forced to die in want of food. Poverty caused death of citizens is a 'paradigmatic' violation of human rights, and as such a crime committed by the State and international community.²⁰⁰ The South Asian defense spending can thus be defined as 'sheer violation of human rights' by States because such spending forfeits people of their 'minimum threshold condition' of human security and dignity. This spending steals foods of people to feed 'guns'. States have no authority or power to claim that 'they are the 'users of the people's wisdom. It can assume the role of people's attorney neither. A State is merely a mechanism of people to ensure their 'security, freedom and dignity' through constant change and development endeavors'. State has neither its independent will nor capacity to 'function' independently of the will and capacity of its constituents-the people.
- d. State cannot 'set goals for a society' different to that of its members. Poverty is engendered when State comes forward to set goals of human society in disregard of the actual needs of its members. No interest of State can be defined as 'public interest'. Public interest is a

²⁰⁰ Thomas Pogge 2002. "States by corruption and extortion of national revenues and international community through practice of monopolized international trade disadvantageous to developing countries, protectionist exemptions insisted upon developing countries, international resource privilege and funding for luxury of expatriate experts, managers and consultants do not merely allow for poverty and deprivation but engender and secure poverty and inequality. For further information" Also see, Thomas Brooks, 2011.

'collective aspiration or wisdom of the people'. State's interest does not necessarily represent the 'collective aspiration or wisdom' of people. Poverty is a state of life which is abhorred by the public interest. Hence, State cannot justify poverty in any pretext. The first and foremost obligation of the State, as an organized mechanism of the people to ensure 'security, freedom and dignity' against want, violence, diseases, immature death and exploitation, and any other forms of disruption, is to promote 'progressive transformation of the lives of people'.

XI. POLITICAL IMPLICATION OF POVERTY AND DEPRIVATION

Why does poverty need to be addressed by State as its first agenda? The answer is plain. Poverty as a cause of deprivation disables people from enjoying their freedoms creatively. Poverty underlies a deficiency and as such forms a formidable factor destroying human potential to transform society into 'an equitable institution'. By contrast, poverty of masses empowers non-poor to monopolize the authority of State. Poverty is thus a stumbling block in achieving institutionalization and sustainability of democracy. Precisely speaking, poverty is a symptom of dysfunctionality of State. Eradication of poverty, thus, implies an attempt to 'ensure dynamism and productivity of the State'.

Failure to recognize and enforce 'economic, social and development' rights amounts to reinforcement of the 'state of poverty', and ultimately the cause of 'defiling' democracy. Economic, social and development rights are instruments of justice for securing positive transformation in lives, which is generally called 'development'. Development is thus an anti-thesis of the state of poverty and deprivation. 'Democracy is a synthesis'. Democracy achieves stability by enhanced 'minimum threshold condition' of human rights. Indeed, the significance of economic and social rights 'achieve minimum threshold condition' is decisive. To look at significance of economic and social rights from Marxist point of view, the enhancement of the collective egalitarian solidarity is the most desired one. Democracy falls in a state of chaos in absence of an 'egalitarian solidarity' of the people.²⁰¹ Marxist critiques point out that 'liberal

²⁰¹ Marxist human rights intellectuals assert that the rights and freedoms of bourgeois democracies are purely formal –at most procedural- and thus are illusions. To Marxists, the working class (who today live in the third world due to outsourcing) lack the economic means and intellectual formation to enforce its rights. Thus, for Marxists, workers are victims of 'the shell of game". For detail; see, Eric Engle, "Human Rights According to Marxism", Available online at <http://ssrn.org/abstract>

states fail to respect the basic rights and dignity of the poor.²⁰² This is where the pitfalls of liberal democracy lie. According to socialism, the distributive justice promotes collectivization and socialization of human potentials, which in fact, is a base-stone for a democratic system. The liberal democracy has indiscreetly ignored this fact by consistently denying to give same gravity to economic and social rights. Attaining solidarity of and equality among people constitutes a pre-requisite for functionality of democracy, and economic and social rights are touchstones of attaining such solidarity and equality.²⁰³ Hence, recognition and enforcement of economic and social rights results in development of individuals ensuring constructive engagement in 'exercise of civil and political' rights, which make democracy a functional system in societies. Poverty is 'an obstruction' to democracy needing the liberal states and international community to recognize and sincerely enforce.

Why South Asia has failed to materialize this 'core principle'? There are many hidden factors needing intensive research, which is not possible without long-term engaged efforts. Nevertheless, some assumptions can be put forward at this juncture.

- a. South Asia has inherited a wrong 'notion' of state. Most countries in South Asia have inherited so-called modern structure of 'state' from colonial power, the foundation of which is rested on Hobbesian theory. It believes that a state is a 'representative institution of people'. For Hobbes, people have unconditionally transferred their powers to the State so that it has power to rule them. The colonial powers in Asia ruled over it for centuries under this doctrine. The so-called modern States in South Asia are indiscreetly influenced by the same doctrine. As matter of fact, the Governments here implicitly take people as 'subordinate entities'. The consequence is that people's wills or choices, or rights are meticulously disregarded in the process of nation building. For them 'development' is a matter of state's privilege. Hence, governments in South Asia are engaged in building huge defense and other projects at the cost of lives of millions of hungry people. The poverty is thus an outcome of the 'wrong notion of political, social and economic elites about State'. State for them is an entity above the 'people'. It is, therefore, hard to expect such a regime to

²⁰² Eric Engle, "Human Rights According to Marxism", Available online at <http://ssrn.org/abstract>

²⁰³ For general discourse on Marxism and human rights; see, Evgney Pashukanis, *Law and Marxism: A General Theory*, trans. Barbara Einhorn; Ink Links, 1978.

'uplift people's position to the threshold condition' of development without addressing the said notion of elites about State.

- b. The people's sovereignty is another form of deception used by States in the region. The people's sovereignty is an attribute of people's power to 'determine legitimacy of the State's authority. By contrast, the States in the region have stepped up to define 'people' sovereignty as 'state's authority' to rule people independent of their aspirations or expectations. The exercise of 'sovereignty' is carried out by people by 'forming collective interests- popularly known as 'public interest'. However, Hobbesian model of States have deceptively converged the 'idea of public interest' into national interest connoting the 'independent will of the state'. This deception implicitly legitimizes the 'authority of the State to declare priority in development endeavors irrespective of people's consent'. The poverty in this perspective is an outcome of 'State's endeavors to set its own goals as an independent institution'.
- c. Most States in South Asia are, thus, promoting that modality of development which empowers the state in the cost of people's sovereignty. The widening gap between rich and poor and urban and rural population can be attributed to the deceptive doctrine of 'state as an independent entity'. Poverty is an outcome of the State's deception to assume the shape of an independent entity. No guarantee of human security is possible until and unless this deceptive Hobbesian doctrine is stopped from being practiced in the name of 'democracy'.

State is a machinery of expressing collective will of people for their 'collective security'. It is not only a truism but a 'goal set forth for the unconditional security' of people. Human rights are fundamental values as well as rules to 'prevent states from articulating their independent wills against the people's choice for welfare and security'. 'Development' targeted to meet the 'minimum threshold condition for security and dignity of people' is a measure to correct the setbacks resulted by deceptive exercise of powers by States.

XII. SOCIO-ECONOMIC AND POLITICAL PROBLEMS SURROUNDING OF HUMAN RIGHTS VIOLATIONS

As elaborately argued above, 'development for progressive change in the existing conditions of life' is an 'innate right of people'—not a privilege of Government. A State has no authority to

deny taking endeavors for the sake of progressive transformation of the lives of its citizens. No individual can build one's own independent empire. The society is 'a collective form of lives' that necessitates a system of sharing 'intelligence, wisdom and endeavors for development of every individual. State is a machinery devised by human wisdom to facilitate erection of this essentially 'sharing system'. This simple philosophy connotes that (a) monopoly over resources by an individual or a group is forbidden; (b) resources are common heritage of all and their utilization should necessarily benefit the entire people equitably; (c) the common resource can be best utilized by 'harnessing the fullest potential of each human individual, hence, development of productivity of each human individual is a precondition as well as their human right; (d) equity is a minimum norm for distribution of advantages and resources, hence, poverty is a state of denial of equity to the poor and as such a violation of human rights; (e) the state of poverty is, thus, not a 'fate' of individual but failure of the State to be a meaningful machinery to facilitate the process of development; and (f) no legitimacy to Governments which fail to 'transform the state of the poor into 'threshold condition' of development.

This philosophy underscores a fundamental doctrine that 'every individual in a society has a right to "have a right to development". The facts described above present a stark and compelling situation of human tragedy created by deceptive endeavors of the governments in South Asia. The situation points out to a glaring fact that, today in South Asia, poverty is the most potent violation of all human rights and, as such, constitutes a major threat not only to the survival of the greatest numbers of the human population, but also to the dynamics that make democracy and rule of law a functional system of the society'.

The looming political instability, the fundamentalism grotesquely infesting democratic institutions, deeply rooted problem of corruption, the widening gap between the rich and poor and phenomenal violence in South Asia maintain inseparable nexus with poverty, which has occurred as a consequence massive human rights violation by States. The States' failure to protect human rights is 'paradigmatic' by all implications. The State's failure to protect human rights is aggravated by several attributive factors. Such as:

- a. *Fundamentalist nationalism or patriotism*: The governance systems of the South Asian nations are in control of elite population that have intentionally chosen the fundamentalist notion of nationalism or patriotism as a defense for its existence. Nationalism in its fundamentalist or ultra-notion is used as 'opium' to exploit common people's sentiment of

belongingness to a 'nation'. The entire edifice of 'national security doctrine' and military outfits-spending is justified by this perspective. The poor mass is deluded. Individuals are divided. The spending of the national resources in military purposes against human welfare is justified on the ground of threats to national security.

- b. *Myth of democracy*: Exclusion of masses in democratic practice is a serious problem in all South Asian nations. Politics is used as an 'instrument' of fundamentalism religiously, politically and socially. The elite class, by championing the radical nationalism or patriotism, seeks to 'legitimize its wrong policies and programs' that divide the society and subject masses to extremity of poverty. The pride taken by South Asian nations in organizing big events such as Common Wealth Game, Cricket World Cup etc. are few examples of misutilization of resources in the cost of lives of poor people. While States have no adequate money for 'safe drinking water, schools, hospitals, and other basic amenities, they are often ready to spend billions of rupees on such events. This notion shows lacking of the 'Government's primary responsibility to the poor communities'.
- c. *Confused role of UN and other development organizations*: Despite the fact that the principles contained in the Universal Declaration of Human Rights clearly establish poverty as a human rights violation, it was only during 1980s that the UN began to look at the issue of poverty explicitly as a human rights issue. In 1992, the General Assembly asserted that extreme poverty and exclusion constituted the violation of human dignity. The Millennium Declaration of 2000 was noteworthy in the regard that it was the first time that the heads of States had recognized explicitly the link between the realization of the right to development and poverty reduction. Even though the UN has been less active to 'enforce' the poverty eradication as a matter of human rights of people, it has engendered a good excuse for States to flout obligations to implement effective programs for poverty reduction as a 'matter of right of people'. The development efforts of States in South Asia are still considered as a matter of privileges of the governmental decisions. The inclusion of the beneficiaries in priority fixation process is still not a matter of concern for the Governments. For instance, in Nepal, reportedly, 9000 women die due to lack of basic health care supports during pregnancy and childbirth. In contrary, the huge budget has been allocated by the Government for a special hospital for 'civil servants'. Who should fix the 'priority' of State's

expenditure? This is what UN is not clear about its 'policy determination'. The large chunk of financial resources is, thus, being channeled by the UN to the development efforts of poor Asian countries' suffering from this shortcoming.

- d. *Problem in definition of poverty, or conservative attitude to define poverty:* The definition of concept of poverty is a vexing issue. Skeptics have argued that the concept is too vague and broad, as well as subjective in the sense that it is prone to encompassing any level of deprivation. The World Bank's definition relates poverty to the material ability to purchase minimum goods and services, i.e. poverty is defined as living on one US dollar or less a day. This definition lacks consideration about the 'issue of dignity'- the human dignity to survive as a human being equal to others. Indeed, the poverty relates to the lack of capability of individuals living in poverty to enjoy certain basic rights which are necessary to achieve and retain human dignity. Again, the issue of 'State's policy becomes related with this point'. Nepal, for instance, spent almost 10 hundred million rupees for Constituent Assembly elections and constitution making process. The similar amount was also expended by 'donor agencies'. However, all these costs were made for visits, meetings of politicians, deliberation of members and so on. How the constitution making process could be made 'realistic' to rescue the '31 percent below poverty line people' could not become an issue of debate. These people were not given a platform for discussion either. The issue of 'dignity' as a matter of right is, thus, effectively discarded. The conceptualization of poverty eradication strategies thus requires 'standing at right-based approach', which tells us that the people living in poverty have inalienable entitlements to human rights, and are not passive recipients of commodities only. The Constitution making process in Nepal, for instance, should be a platform for 'people living in poverty to address their basic rights to food, education, health and environment conducive to development'. One important element at this point is that the prohibition of 'discrimination' is a central or key issue of the right-based approach. Individuals and groups find themselves in a situation of poverty as a result of government policy which discriminates against them.
- e. *The gap between rhetoric of the right based approach and reality of development planning:* There is a dangerous and critical gap between rhetoric of the right-based approach and reality of the development planning and poverty eradication interventions. The planning of

development programs excludes the 'poor beneficiaries' and this is, at least in case of Nepal, true with both the Government of Nepal and donor agencies. Two specific examples can be cited. In 1993, the World Bank, Asian Development Bank and many other donor agencies in Nepal urged the newly formed democratic government to pursue 'privatization and open market economy'.²⁰⁴ Consequently, the Government privatized a 'leather factory and a paper factory', the two biggest government undertakings directly benefiting the people as they supplied cheaper commodities to the poor people. The over exaggerated and mismanaged privatization drive thus stole the right of poor people to obtain 'affordable commodities that were primarily used by the poor people'. Development in this sense is a curse for common people. Education became fully privatized and the private schools became unaffordable to the poor people. Good education in Nepal, thus, became a 'privilege of the rich people'. The government schools failed to compete with private schools and universities. The access to service sector with government schools graduates then became a 'dream' only. The exclusion of the poor in decision making is, thus, a 'deprivation of human rights' and hence constitutes a factor of prolongation of the poverty.

- f. *The transnational corporations* are becoming a serious cause of violation of human rights in South Asia. In the context of globalization and privatization drives, the Governments of South Asia are happy enough to have partnership with transnational companies across the world. Such companies have obtained absolute power or privileges for 'utilization of resources'. Some of these resources constituted traditionally the 'source of sole income and livelihood' for the poor local people. For instance, India has signed 46 Memorandums of Understanding with transnational companies that allow them to extract minerals and develop industries in Orissa. Consequently, the poor people in that province are becoming landless. These lands are being given to the transnational companies at throw-away prices. Tribal people's customary rights on land are discarded. The government has been involved in forceful acquisition of such lands to give to transnational companies.²⁰⁵ Obviously,

²⁰⁴ In 1994, The World Bank insisted for rise in price of electricity. It was thought that the price hike for consumers would attract investors. The people resisted the decision of the government, though the price rise kept going on. While privatization was fully brought in the policies of government, the per-capita income of people did not rise. The democracy in 1990 thus did not bring good days for people, and this is possibly a cause of rise of Maoist insurgency that forced the entire nation plunged into a crisis for a decade taking lives of 14000 people causing serious destruction of the infrastructures.

²⁰⁵ Ruchee Yadav 2006

corporate social responsibility and accountability for human rights violations are issues of serious consideration in Asia.²⁰⁶ While these transnational companies have made serious intrusion into human rights of people, traditionally, the focus lies only on the western transnational groups. However, similar companies of India, China, Korea and Japan have replaced the western companies, and they are more immune from their responsibilities. These companies command stronger support from their governments.

All these problems are related with less stable democracy and phenomenal corruption in all levels of government in South Asia. Together, these problems constitute the 'focus of human rights problems' in connection with the development in Asia. The issues, thus, needing serious attentions are:

- a. *Inclusive democracy*: How to give access to people to meaningful participation on control over their resources is a major issue for 'protection and promotion of human rights' of poor people. The development is a choice and right of people, so no government can exercise the power of 'imposing development projects'. The development projects should not be 'luxury of decision making by the government'. The people should not be treated like silent or passive recipients of the 'development projects'. Development is a part of the process of 'progressive transformation' of the lives of citizens and hence, it should be institutionalized as a democratic process of governance. The politics is a matter of direct and immediate concern of the people and hence State as well as non-state actors should internalize the values in process of governance. Especially, the ILO Convention 169 that recognizes the 'autonomy of indigenous people in local resources should be a matter of key concern in any matters of development projects'.
- b. *Paramount concerns on economic, social and cultural rights*: While Article 2 of ESCR refers to 'progressive realization of such rights, depending on availability of resources, the same should not be viewed as 'immunity to the government not to act or to blur the rights conferred upon by the covenant as unenforceable abstract values'. Most Asian countries have conventionally argued that 'the dearth of resources' is a major challenge to prompt and

²⁰⁶ Of the world's 100 largest economies, 51 are now global corporations rather than countries. There are currently some 70,000 transnational firms, together with roughly 700,000 subsidiaries and millions of suppliers spanning every corner of the world. The global expansion of the market economy has resulted in an overwhelming intrusion of transnational corporate activity into the Asian region.

effective recognition of the 'ESCR'. However, the same seems to be a 'sheer lie' if considered from the pattern of 'expenditure distribution system'. The South Asians nations have been overwhelmingly influenced by the notion of perceived threat of security, and consequently, large part of the revenue is consumed by military affairs. Nepal, for instance, has no use of maintaining a 'huge military in view of its strategic situation between China and India'. It is conceivably illogical to argue that Nepal can protect its national security by building strength of 'military maneuverings and weapons'. It had a military force of 54000 persons until 1998. The Maoist insurgency hit the nation subsequently, and with a view to control the insurgency, the force was raised to 90,000. The military strategy, however, failed to address the conflict. The crisis was politically addressed in 2006. The government is, however, adamant to maintain the force with all '90,000'. The revenue of billions of rupees is, thus, spent on military for no reason at all. The revenue being used in building military strength and weapons, if diverted to social justice sector, could be largely adequate to address number of problems associated with basic needs of people. The major constraint in this regard is the 'conventional notion of state' which emphasizes the military character or security of the state as its prime function'.

- c. *Control on increasing cost of statecraft*: In Nepal, for instance, the monthly cost of a minister is 1.6 million rupees (approximately 30,000 USD). The large part of this cost goes for ceremonial activities. A minister has a troop of over 20 police personal; the escort cars, personal security guards etc. These people are ceremonial rather than necessity. They are associated with 'feudal status' or dignity of being a 'big-person'. Nepal has a practice of using sophisticated imported cars (like Pajero and Prado from Japan) by political leaders, high-position government officials, police and military personnel and consultants. This is what they have learned from chief of international development agencies. Every year millions of rupees are spent for importing cars. The illegal benefit behind such transaction is a vested interest. Over one thousand Nepalese government officials have such cars, which thus steals the money that could otherwise go to women who are forced to die for absence of medical care or children who have no privilege to go to school or this revenue could go towards construction of school buildings or hospitals. The expenditure on ceremonial activities of the statecraft is a means of 'legitimizing corruption'.

- d. *Diffusion of the centralization of administration:* The system of centralizing the administration is serious hurdle for empowerment of general to enjoyment of their rights. The local government in most South Asian countries is effectively controlled by the central government. The centralization of the tax and development planning system is the most serious constraint in 'empowering the people and eradication of poverty'. The centralization tendency is antagonistic to a 'democratic governance system'. It is equally responsible for failure of the government projects. The international and bilateral donor agencies are not out of this deficiency. Most projects of the World Bank in Nepal, for instance, follow the traditional centralized bureaucratic system. The promotion or enhancement of local autonomous governance system is an effective check against corruption as well as deficiency of the development projects.
- e. *Increased expenditure on education and productivity enhancement:* Emphasis on education and human productivity enhancement should be taken as policy priority by Government as well as international and bilateral development agencies. The majority population of Asia, especially South Asia, is young. The average age of the South Asian population 20 years from now will be 29 years as compared to Chinese and Japanese population in same period as 34 and 43 respectively. The population would be a boon to the development of South Asia if the quality of education and human productivity are enhanced.
- f. *Protection of natural resources from abusive utilization:* The lacking of policy and planning has largely resulted in destruction of natural resources. On the one hand, the transnational companies have been exploiting such resources excessively and at a marginal cost and on the other hand they are causing irreparable environmental destruction. *Dabar of India*, for instance, is using herbs of Nepal almost freely. The '*Yarshmbagumba*', an organism, for instance, is harvested in the high hills is extorted from local people for few hundred rupees and refined and used in herbal products for medications to be sold at many times the price. Nepal's water resources are facing the same situation. The rivers have been captured by national or international companies for hydro-electricity projects and the local people are forced to incur loss of irrigation facilities and suffer from other environmental degradations.

XIII. CONCLUSION

The culture of elitism founded on notion of feudalism is abundant in developing South Asian nations. The lacking of the culture of popular accountability in the bureaucracy as well as in the political segment of the government is a serious challenge for meaningfully linking the development activities with human rights. The policies and style of running the governments in South Asia seems to be a vital cause of the prolongation of poverty in the South Asian societies. The feudal culture coupled by phenomenal problem of corruption should be attributed for continuation of the state of extreme poverty in the South Asian nations.

The notion of development projects as means of 'material luxury and comfort' given by government to people is phenomenal in the South Asian nations. The 'development projects' are in fact rights of people; they are not 'gifts' of government. The international aid agencies must put priority on eradicating this 'understanding' of development. The international agencies by avoiding being 'accomplices' to anti-human rights notion of development can widen the scope of human rights enforcement in South Asian countries.

Human rights is necessary not for 'luxury' of people; it is, indeed, a matter of 'human dignity'. No development project that underestimates or ignores human dignity can be accepted as a development activity. The core value of human rights is to 'promote freedoms of people against violence, want, exploitation, diseases and unnatural death. These ancient values nurtured by South Asia provide a 'solid' ground for enforcement of economic and social, and development rights that 'link development as an essential element of human rights observance'. This philosophically positive attribute of South Asia should be fully exploited by the international agencies. Their contribution would be significantly important, provided it goes towards helping people and to subject the bureaucracy and political segment of government in South Asia to democratic accountability. The primary concern of human rights in South Asia is to eradicate the poverty and relieve the vast majority of the population from going to bed without food, help children go to schools and protect women from death while giving birth to children. This is what can be called 'true face of human right'. No democracy, otherwise, will have meaning in a society where people have no means to survive. Democracy has meaning only for 'people' who are alive.