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# Human Rights, Good Governance And Globalisation: A South Asian Perspective

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## **Introduction**

The evolution of mechanisms of protection and promotion of Human Rights within the framework of UN charter has been a distinguished feature of the Charter of the Organization. The main objective of the Organization was to prod the states towards establishing and strengthening a constitutional-democratic order in the post Second World war decolonized world which, in fact, had the local, regional and international implications. Transformation of new States at the political, social and cultural levels and bringing them within the framework of a democratic order was an arduous task which required structural changes and persistent initiatives on the part of States. Moreover, there was a realization that the prerequisite of this transformation was to provide

guidance to States in achieving this very objective. Therefore, UN organs, accountable to UN and monitoring the implementation of UN standards were created. It may be mentioned here that ECOSOC is one of the six Principal organs of the UN system established by UN Charter.

## **Human Rights**

Universal Declaration of Human Rights was adopted by UN General Assembly in December, 1948. The UN Economic and Social Council (ECOSOC) which is the principal organ of the UN system established by UN Charter, created the Commission on Human Rights which was later replaced by UN Council on Human Rights as a subsidiary body of the UN General Assembly in March, 2006. The reconstituted body added new and

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effective features to this body. One of the prominent feature is the introduction of *Annual Periodic Report* of the states. These reports provide an audit of States relating to their performance in the arena of Human Rights. The Council keeps on introducing new themes according to requirement of changing global situations. Introducing the theme on *Terrorism* provides an illustration to the point. In the same vein Council has been organizing panel discussions relating to human rights issues from time to time. In December 2015 UN Human Rights Council organized a valuable panel discussion on 'a human rights based approach to good governance in public service'. (The details of this discussion have been provided titled 'Document' in this issue).

It needs to be recognized that the concept of human rights which was the mainstay of human rights organ was too generalized and even vague in the initial phase. In case the human rights body had to deal exclusively with the so called First World, the generalized concept would not create much of the problem. However, the challenge was to respond to the new realities and predicaments which the newly decolonized states, generally defined as Third World, posed for the UN Human Rights body. Therefore, Human Rights responded to these

challenges gradually and the process is still continuing. It may be mentioned here that it took UN two decades from the date of its formation to adopt Conventions on *Civil and Political Rights and Economic, Social and Cultural Rights* which have special significance for the so called Third World States.

### **Good Governance**

The ground realities in the new decolonized world and their correlation with the realization of human rights prodded the UN human rights bodies to look closely on the functioning of the governance and issues related to it. After adopting the Convention of *Economic, Social and Cultural Rights*, it took UN Council on Human Rights two more decades to realize that human rights can not be realized without accomplishing the objective of *Good Governance*. Thus, it was recognized that Human Rights and Good Governance were mutually reinforcing and Good Governance was a condition precedent to the realization of Human Rights. In fact, many a conflict in Asia and Africa and even in parts of Europe led the UN bodies to this very realization. It is in this regard that Council on Human Rights lays stress on the study of functioning of institutions and monitors this functioning through

different mechanisms to obtain the data from the States. Governance has now emerged as principal concern in this regard. It is a little difficult to prescribe a precise and comprehensive definition of Good Governance. However, it is well recognized that the exercise of authority through political and institutional processes may be defined as Good Governance. These processes should not be general, rather they have to be specific. These processes should be transparent ensuring accountability and encouraging public participation. World Bank has provided the following *indicators* of Good Governance: a) democracy; b) transparency; c) accountability, and d) improvement of quality of human life. It may be underlined that a shift has to be brought about from *governance to good governance*. (Emphasis added).

### **South Asian Scene**

In a panel discussion on a 'Human rights – based approach to good governance in the public service', the following introductory remarks are highly relevant:

"Human Rights and good governance were intrinsically interlinked and interdependent. A human rights – based approach to

good governance required state's to guarantee non-discrimination and equally in the provision of public services. Good governance also served as a *strong driver of public confidence, peace and sustainable development* (emphasis added). When State-run processes and mechanisms were transparent, accountable to the people, operated efficiently and effectively, and respected the rule of law, *Public confidence was strengthened* (emphasis added) public grievances diminished, public well-being enhanced and economic and social progress improved", (Document A/HRC/31/28).

In most of the Asian countries in general and South Asian states in particular, the declarations of constitutional-democratic order have been made. And prima facie most of these countries claim to be democratic. However, as experience and case studies reveal, most of these states suffer from serious deficiencies from human rights perspective. In this regard, it should be a rewarding experience to look at South Asia as a region and point out successes and failures in the societies comprising this very region. A concerted and a joint effort is needed to bring about systemic reforms in these states. South Asia, geographical contiguity aside, equally shares linguistic and

cultural affinities. An approach to critically examine the status of Good Governance and Human Rights in these states and underlining challenges and opportunity would be a rewarding experience for these states. The scrutiny of the functioning of institutions is the first requirement in this behalf.

### **Democratic Institutions**

South Asian states during the colonial era were directly either under British rule or these were ruled by the Princes. In both the cases, family and kinship dominated the structures of the government. In post colonial era and with the onset of democratic order the tradition of domination of structures by the family, clan and other related kinship continues in a new garb which is the primary reason of alienation of common people from the system. It is assumed that politics means access to power and domination of government which has to be acquired and controlled through any means. It is often argued that politics being an open field and anybody can jump in this field to perform. However, the problem arises when sharing of political power is done as the practice of succession in tune with the feudal autocratic order. In case the family members of a politician have a record of public service or they have been

active in the political field for a considerable period of time, people would accept it without demur. In most of the cases that is not a fact and the manipulation is too obvious. In case of India, from the state of Jammu and Kashmir in the north, down to the South; from the East to the Western part of the country, this tradition is well entrenched. It needs to be realized that at the public level it creates disenchantment which leads to alienation of masses from the system which manifests in different forms particularly through violent means. A perception prevails that it is the manipulation of the system which needs to be rectified. It is an irony that the general public which hold *voting power* is not sufficiently aware of this power owing to many factors including illiteracy and ignorance. However, democracy in South Asia is facing challenges which invite interventions at various levels. It is well recognized that it is through democratic institutions which the political power is controlled. Political parties/groupings devise strategies to control the political institutions. Since it is the established practice to control these institutions through the mechanism of numbers and establish the supremacy on the basis of majority/minority basis, a perverse methodology to deal with this mechanism was introduced. Thus, the instrument of *defections*

was introduced in the system. Through this machination, elected representatives belonging to a particular political party would withdraw their support to the existing government leading to its downfall and extend support to another party enabling it to form the government. In this process, they would demolish the basis of mandate given to a particular party by the public. At times such events would create entertaining situations but it equally led to a process of erosion of faith of general public in the system. In India, a stringent '*Anti Defection*' Law has been successfully able to eliminate this practice to a major extent. Be that as it is, the consolidation of *vote banks* in the name of caste, ethnicity, language and religion remain big challenges for democracy in South Asia.

Another challenge to democratic institutions in South Asia is posed by the frequent interventions by the army in the political affairs of the state. These interventions subvert the democratic institutions by replacing them and throwing out democratically elected governments. Pakistan and Bangladesh provide illustrations to the point. This practice again, weakens the faith of people in democracy. It equally encourages the totalitarian and chauvinistic elements to impose their ideologies

on the societies and in the process democratic orders gradually get obliterated. The experience equally reveals that absence of democratic order leads to armed rebellions intended to change the system and restore the sanctity of democratic institutions. In this regard, Nepal provides an illustration to the point.

South Asian societies are multi-religious and pluri-linguistic entities. The democratic framework should respect these identities and allow the people to celebrate these distinctions. The imposition of a uniform linguistic-cultural paradigm promotes a perpetual friction and turmoil in societies. Bangladesh broke away from Pakistan when its linguistic-cultural rights were subverted. This was in addition to denial of their democratic rights. In Sri Lanka the denial of accommodation of ethno-cultural-linguistic aspirations of Tamil population led to armed rebellion resulting in perpetual bloody conflict for a long time.

A study of Covenants of UN Human Rights clearly stresses the supremacy of democratic, cultural and linguistic rights. It is established that denial of these rights is a challenge to peaceful co-existence of people, hence to be observed and respected.

It is equally well established that *Rule of Law* is central to the effective functioning of democratic governance. In this regard, governmental machinery has a key role to play. The experience brings forth the fact that misuse of this mechanism by different actors to garner benefits by depriving the legitimate aspirants from their due rewards has created havoc in South Asia. The subversion of Rule of Law has grave consequences on the stability of social and political order. It nourishes anarchical tendencies leading to a cycle of violence. In this regard, judiciary, particularly at the higher levels has been quite proactive in ensuring the adherence to *Rule of Law*. The available records reveal that Indian judiciary has been quite proactive and is playing a significant role in ensuring the adherence to rule of law.

### **Corruption**

Corruption in public offices is a perennial issue in most of the South Asian States. The local, regional and global indices indicate that some of the South Asian states, including India, have a poor record on the issue of corruption. In the indices of anti-corruption measures they rank very low. It is significant to note that with the processes of *privatization* and *globalization* the problem of

corruption is bound to assume intricate and complex forms with grave social and economic implications. The legal approach to the problem so far has been slow and selective. It is well documented that this menace has been a stumbling block in the social and economic transformation of societies of the region. This problem which has deep and complicated roots may be dealt with a renewed and effective approach. In this regard the measures ensuring transparency and accountability hold the promise of minimizing, if not eliminating, the problem. The mechanism to invoke these approaches lies in the *Right to Information*. This Right ensures the public knowledge about governmental policies, decision making processes and identify the actors involved in these processes. This would make governance accountable and transparent and enhance the faith of general public in the system.

### **Right To Information**

The creative interpretations of Indian Supreme Court on fundamental rights enshrined in the Constitution of India provide a beacon light in ensuring a healthy social and political system. In 1976, the Supreme Court declared in the case of *Raj Narian Vs. State of U.P* that the Right to Information being inherent in

Article 19 (1) of the Constitution (Freedom of Speech and Expression) was a part of our fundamental rights. According to this judgment, people would express themselves only if they had the information. Ironically, it took government more than 25 years to pass the *Right to Information Act*, 2005. It is a very powerful law according to which any person can seek any information from government; inspect any government file or document. This enactment should be a model for other states of South Asia to ensure transparency and accountability.

### **Conclusion**

The foregoing appraisal of relationship between Human Rights and Good Governance essentially underlines the public participation in Development. The importance of this theme may be seen in its adoption as *Right to Development* by the UNCHR which is being regularly discussed in the sessions of the Council. This recognition has a close bearing on the concept of equality,

public participation and transparency which are the basic elements of good governance. The UN approach emphasizes public, participation in sustainable development and in this regard rejects the prescriptive approach of *development assistance*. Development models should not be thrust from the top rather they should emerge from the below. It is the people on the ground who are the best judge of the local situations and requirements of development. It is equally important to recognize that devolution of power holds the key to realize the dream of good governance and uphold human rights. South Asian States should join hands and learn from each others, experiences to realize this dream. It is very important to note that privatization which is at the heart of processes of globalization has changed the roles in which the role of government is getting minimized. This aspect is gradually shaking the very system on which the states were built in the Post Colonial era of the world. This stark reality needs to be comprehended and recognized. ■