

SOME COMMON ISSUES AND PROBLEMS RELATING TO POVERTY AND LAW

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Nations in the south Asian region faces many similar problems or challenges concerning human rights protection and poverty alleviation. System of law and justice is 'an important sector of development' for achieving poverty alleviation and human rights protections. The following pressing problems will provide additional insights about and spatial intensity or extremity of poverty and ill-governance in South Asia. These problems are common to all South Asian nations, and are identified as 'stumbling block' to institutionalization of democracy and good governance. These are the sectors in which SAARC nations can develop cooperation of 'integrating laws'.

1. **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 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.²

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 poverty level in South Asia has rare impacts on lives of women. The 'regressive status quo' on relationship between men and women is still at large. No poverty thus can be addressed unless it has been recognized as a consequence of human rights violation. The role of law to address this problem is insignificant.

2. **RURAL POOR AND POVERTY:**

Over the past one decade, the share of South Asia in total number of poor, despite some reduction in poverty rate, has increased significantly. The state of rural poverty has gone worse from bad. 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,

². 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.

employment and other services in rural areas. The intensification of rural poverty has thus posed interface with increasing problem of violence and insurgency.³

Characteristically, the economic growth in South Asia, India in particular, is mainly limited 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.⁴ 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 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 due to surge of Multinational companies alone or their partnership with 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 about them has already saw 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 and 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 its 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 posed a serious

³. A 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 plaguing 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

⁴. Human Development In South Asia 2007: A Ten-year Review, The Mahabub ul Haq Human Development Center; Oxford University Press, Ch. Overview.

consequence. 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 to cause 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 to fall in 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 embarrass a neo-liberal policies of development with open arms and hearts. As a result, from early 1990s, MNCs and big national companies (BNCs) 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 along with ensuing displacement of almost 100 percent of tribal population. Obviously, these people have now become landless.⁵ It is now obvious that Orissa is one of states today worse hit by the emerging Naxalite movement.⁶

India was able to dampen the Naxalite movement significantly in 1971. With inception of new the 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 daces, the economic boom has given almost 100% rise of per capita income in India. MNCs have sustained this growth by pumping billons of dollar. But the 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

⁵ . 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

⁶ . Naxalite movement is a 'radical communist movement' which avows for establishment of a proletariat 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.

Naxalite movement which is increasingly gaining momentum in Red-corridor area.⁷ 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 the 'ill-governance' plaguing the Indian politics. Candidly speaking, the existing Indian governance system mixes 'traditional elitisms,⁸ neo-elitism, criminalization of politics⁹ and emerging control of economy by MNCs and BNCs backed by penetrating state of corruption in the state machinery'.

3. **EDUCATION AND POVERTY:**

Despite significant improvements in overall literacy rate, the South Asia nations continue to be one of the most uneducated and illiterate regions in the world containing around 379 million illiterate adults¹⁰—the highest absolute number in the world. India and Pakistan

7. '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>

8. 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

9. 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

10. Human Development In South Asia 2007: A Ten-year Review, The Mahabub ul Haq Human Development Center; Oxford University Press, p.2

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 at national level thus has very less significance to those huge masses in rural areas and shanty towns who are unable afford education their children. The existence of huge uneducated mass implies to a state of ‘unproductiveness’ of the population as well as mammoth state of deprivation. No protection of human in such a state is possible as the ‘ignorance and deprivation’ are the components of sustainability of regressive status quo.

4. MALNUTRITION, HEALTH, DEATHS AND POVERTY:

To look South Asia from perspectives of health indicators, the situation is scary. Women and children are the most vulnerable groups. It is 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 of 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.¹¹

5. 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.¹² 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,¹³ and in Nepal it is shameful as the lowest 20 percent receives only 5 percent of the total GDP.¹⁴ The instances of Pakistan and Nepal provide a glaringly shameful paradigm of increasing

¹¹. Human Development In South Asia 2007: A Ten-year Review, The Mahabub ul Haq Human Development Center; Oxford University Press, p.3

¹². Human Development In South Asia 2007: A Ten-year Review, The Mahabub ul Haq Human Development Center; Oxford University Press, p.4

¹³ Human Development In South Asia 2007: A Ten-year Review, The Mahabub ul Haq Human Development Center; Oxford University Press, p.3

¹⁴. Martinussen, John, 1995, *Democracy, Competition and Choice: Emerging local self-governance in Nepal*, Sage Publication, New Delhi, p. 35

inequality between so-called higher classes and bottom-line population groups. Land constitutes the most primary means of support and employment in South Asia. But this is regarded notorious in this regard. In Pakistan, for example, two thirds of the rural households are landless.¹⁵ The situation in India, Nepal and Bangladesh is hardly better than Pakistan. The lands are grabbed by a small elite population.

6. **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 the 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 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.¹⁶ The income distribution led disparity in the wake of macroeconomic growth rate in recent years has 'widened 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 and to 5.5 percent in 2000-05. This ration in the most 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',
- contributed to add the state of marginalization of excluded groups,
- rendered many more people fall in poverty trap, and
- caused implausibly bigger number of youth to migrate across the border for searching the job.

All these consequences are indicators of a fact that 'the recent economic growth has less humane' in result. It has in fact intensified the risk of human rights violation. 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 is 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

¹⁵ . Human Development In South Asia 2007: A Ten-year Review, The Mahabub ul Haq Human Development Center; Oxford University Press, p.2

¹⁶ . Human Development South Asia 2006: Poverty in South Asia-Challenges and Responses, Karachi; Oxford University Press

same period. The contribution of industry has remained stagnated at around 27 percent.¹⁷ 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 a 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 means development for the South Asian governments.

7. CRISIS OF GOVERNANCE:

Governance is an issue of constant discourse in all forms of diasporas in South Asia. Is there any governance? People are skeptical to answer this question “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 the 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, what seems in South Asia is that the governments in the region are adamant to reject or decline 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, 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’.

¹⁷. Human Development South Asia 2006: Poverty in South Asia-Challenges and Responses, Karachi; Oxford University Press

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. It already more than five decades of the 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 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, and service cost, etc., constitute the major source of revenue in South Asia, which, in fact, puts the poor people tax traps. The South Asian economy 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 from non-quality education. The type of disparity in policies is pervasive.
- criminalization of politics is a rampant character in South Asia. The democracy is thus a myth. The popular participation of the people in democracy is just a mockery of legitimizing the induction in the power.

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 the 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,¹⁸ the performance of the governance system continues to remain poor, traditional and regressive.¹⁹ 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 to survival every day. Nearly one in three is poor, and two third of these poor are women.'²⁰ The poverty constitutes a major cause for early death, diseases, exploitation and violence in Asia. As early in 1940s, Mathma Gandhi, the main architect of the Indian independence or British Quit movement', reflecting on the contribution of poverty on misery of the lives of the vast quantum of people in the region, said: "Poverty is the worst form of violence".

¹⁸. 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.

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²⁰. 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.

Poverty, as a source of violence, is both the cause and consequence of human rights violation in Asia. Yet, poverty in the form of consequence of human rights violation presents a crueler scenario of life. This is the main point which demands for critical assessment of the governance systems of South Asia. As it has widely been felt, the governance systems of South Asia are facing a chronic crisis with no much of hope of people for change in sooner 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;²¹
- 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;²²
- c. in constant institutionalization of violence in politics and ‘feudalization’ of political parties, which promotes patronage and hereditary succession in political parties;²³
- d. in incessant political demonstrations and strikes which regularly affect the economic, educational and productive activities;²⁴
- e. in terrorism and inhuman blasts, detonation, ambush and firings which takes lives of hundreds of innocent children, pregnant women, workers and tourists;²⁵
- f. in corruption and political maneuverings for search of powers;²⁶ and

These signs of crises indicate adequately that in many South Asian states democracy has turned into an empty ritual;²⁷ elections are taken often as means or bridge for political

²¹. 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.

²². 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.

²³. 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.

²⁴. Bangladesh and Nepal are examples for strikes for continuously for a longer period of time.

²⁵. Problems in India and Pakistan are now serious enough.

²⁶. Corruption is plaguing democracy and governance of South Asia seriously.

²⁷. 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 party, 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

leaders to legitimize their access the State's powers. Over the years, the South Asian people are left helpless from feeling excluded from the larger political process which directly affects their livelihoods and way of life.²⁸

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 GDP²⁹ whereas the 20 percent poorest bottom-line people have only a share of 5 percent in the GDP.³⁰ It is a dire paradox.

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.³¹ 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.³² 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.³³ Most pathetically, even the low levels of revenue that governments collect largely fail to materialize into pro-poor expenditure.³⁴ Finally, the ability of South Asian governments to deliver the most basic goods is further weakened by endemic corruption.

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.

²⁸ . Human Development in South Asia 1999: The Crisis of Governance; Oxford University Press.

²⁹ . Human Development in South Asia 1999: The Crisis of Governance; Oxford University Press

³⁰ . Martinussen, John, 1995, *Democracy, Competition and Choice: Emerging local self-governance in Nepal*, Sage Publication, New Delhi, p. 35

³¹ . Human Development in South Asia 1999: The Crisis of Governance; Oxford University Press, p.4

³² . Human Development in South Asia 1999: The Crisis of Governance; Oxford University Press, p.5

³³ . 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.

³⁴ . 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

8. 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 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 of people are deprived of food, health, education, and jobs. For these countless of 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.³⁵ 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 of 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 are responsible to 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.³⁶

9. 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

³⁵. 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.

³⁶. Human Security in South Asia; Oxford University Press for The Mahabub ul Haq Human Development Center, 2005; p 6

human rights 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 roles in elevation of human development. In developing societies, the role of legal system to uplift 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.

a. 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.³⁷
- 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

³⁷. (All ancient traditions asserted these values –to be elaborated from HRSs power point presentation).

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.³⁸

- c. Consequently, the duty of every human individual and institution to ensure the realization of human rights is unlimited, unconditional, and underogable 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 shed lights, 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 existence".³⁹ 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 absolute obligation to protect and enforce. At this point, States have 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.⁴⁰ 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.⁴¹ 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

³⁸ . 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

³⁹ . John Stuart Mill, *On Liberty* , ed. Elizabeth Rapaport, Indianapolis; Hackett (1858) 1978

⁴⁰ . Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reform*; Cambridge: Polity 2002, p. 29

⁴¹ . Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reform*; Cambridge: Polity 2002, p. 59

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 policies on trade, protectionist exemptions insisted upon by developed countries, international resource privilege and culture of luxury in internationally funded projects fuel ill-governance and 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 from 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 are forced to die in want of foods. The poverty caused death of citizens is a 'paradigmatic' violation of human rights, and as such a crime committed by the State and international community.⁴² The South Asian defense spending can thus be defined as 'sheer violation of human rights' by States because such spending

⁴². Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reform*; Cambridge: Polity 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; see, Thom Brooks, "Is Global Poverty a Crime", p. 2. Available online at <http://ssrn.org/abstract>, last visited October 29, 2011.

forfeits people of their 'minimum threshold condition' of human security and dignity. This spending steals foods of people to feed 'guns'. The priority of development project is an agenda decision making by of people themselves. States have not 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 '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'.