

# RIGHT TO AN ADEQUATE STANDARD OF LIVING, DEVELOPMENT AND SOCIAL RESPECT AND DIGNITY

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*YUBARAJ SANGROULA, PH.D<sup>1</sup>*

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<sup>1</sup>. Professor of Jurisprudence and International Law at Kathmandu School of Law, Email [sangroula195@gmail.com](mailto:sangroula195@gmail.com)

## INTRODUCTION:

*“Shiva Devi, a mother of a three years daughter, committed suicide killing her daughter first. She was five months’ pregnant. She had no foods for three days as the three days’ general strikes kept her out of work. Starvation left nothing for her but to end her life along with her daughter. Her husband left home for Punjab of India for works three months ago, but could send nothing for support for the pregnant wife and infant child.”*

*“Laxmi Maya had been dragged out of home and physically assaulted by a mob. She was condemned to ostracization for being a ‘witch’. She held responsible for miscarriage of Ram Maya. The mob was violent. She was not only beaten up severely, and eventually compelled to confess and take “human excreta”.*

*“A man Dalit family was ousted from village for their attempt to enter a local temple”.*

*“The landslide swept away the houses of poor Chepangs. A few kilograms of rice had been saved for occasion of delivery of the daughter-in-law. The landslide did not leave the rice too. There is nothing to feed the daughter when she will give birth to the baby, a Chpang Mother says. We have been compelled to live with “tarul and vhykurs” (roots of wildy grown audible plants).*

In the South Asian region, frequency of such stories is phenomenal. The instances cited here are only few to mention out of millions. Quite contrary to the painful scenario exhibited by the stories, the South Asian region affords billions of dollars to maintain one of the largest military in the world. Our region has mastered in superb technological competence including the one to ‘manufacture sophisticated long range missiles’ with capacity to hit the target at far distance generally beyond the imagination of ordinary human being. These missiles projects consume a huge amount of scarce revenue which otherwise could have been used for sustenance, medical care and many essential services necessary for dignified life. Moreover, this region holds more factories to produce guns and explosive powders than pharmaceuticals. The number of fighter jets lethally killing human beings down sizes the number of hospitals to ‘save lives’. Much more fund is expended 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 larger to that of those who are fortunate to graduate from universities”. Briefly speaking, "We the people of South Asia are compelled to live in paradox or crystal contrast of reality".

It is not unnoticed that thousands of girls in our region either end up at early marriage and vicious cycle of misery to follow- early pregnancy, health hazards and maternity related deaths. It is also a fact that many of them are condemned to sexual exploitation, generally ending at prostitution within or across the border. Youths of nations in our region dream of ‘migration’ abroad for works from the moment of life they start understanding about it. The remittances they yield abroad often working in inhuman conditions constitute one of the major sources of state exchequer. Many mothers are compelled to migrate abroad, developed countries in the west in particular, as “nannies” leaving their infant children at homes. They generously offer love and affection to children in western hemisphere and Japan, who having their parents busy in works lack love and proper take care. But back in homes their infant children are deprived of the same.<sup>2</sup> For

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<sup>2</sup>. If there is a good woman behind every great man, behind every great woman a good 'nanny'. The restructuring of the American and other western countries' families have crated a huge demand for child care. According to a 1992 Department of Consumers' Affairs Report that calls the nanny-placement industry a "free

overwhelmingly large proportion of people in our region, the dream of the 'standard living' is thus something never to be true- simply a 'myth'.

In the given background, this article has made attempt to investigate the 'prospect of enforceability and justiciability of the right to an adequate standard of living, inclusive of the right to development and social respect and dignity' in the context of South Asian region. The article attempts to articulate that the 'right to an adequate standard of living' is not an exclusive privilege of the people from the developed countries; this is equally an indispensable right of the people from any part of the world irrespective of sex, religious belief, social origin, political ideology, nationality, and so on. Peripherally, the article endeavors to examine the scope of the said right from political perspective. The main thrust of the article is to explore the 'challenges and prospects' concerning the justiciability of the right to an adequate standard of living.

Based on the impressions founded on several years' experiences, it hard for us to realize that the democracy in our region hardly means more than a 'system of ballots', a complex of twisted, tampered, messy and bewildered phenomena. The democracy for our region hardly something more than a event to elect the parliament and constitute the government, generally headed by this or that group of elites. It is a grounded reality of our region that the governments often expect people to serve them respectfully- people are hardly given a status more than that of servants. The societies of our region are basically founded on 'notion of hierarchically structured relations of human beings'. Obviously, benefits and privileges the peoples are entitled to are not determined by the 'needs' but by the assigned position of the beneficiary. The social respect and dignity of human being in our societies is thus something that is not considered 'inherently' endowed equally to all; it is rather taken as an exclusive privilege of the elite population.

The core assumption of the paper lies on a belief that the ability of the people to govern themselves, i.e. democratically, is necessary for the protection of all human rights.<sup>3</sup> As Prof. Franck argues, the right to self determination is the cornerstone of the democracy. Conversely, the democracy is the cornerstone of the right to self-determination. Obviously, the concepts of democracy and self-determination maintain an innate connection, in lack of one other cannot exist meaningfully. It is said that the human rights seeks to protect individuals and subjected groups from governmental impositions. Democracy presumes that these individuals or groups have share in the government. The democracy therefore protects human rights through a representative government.<sup>4</sup> The state of democracy in the South Asian region is passing through a volatile situation. Riggings of polls, horse-trading in governments, making and unmaking alliance for

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for all ", there are almost 400,000 children under 13 in New York City whose parents both work. As much as these mothers suffer, their children suffer more. And there are a lot of them. An estimated 30 percent of Filipino children- some eight million-live in households where at least one parent has gone overseas. These children have counterparts in Africa, India, Sri Lanka, Latin America, and the former Soviet Union. How are these children doing? Not very well, according to a survey Manila's Scalabrini Migration Center conducted with more than seven hundred children in 1996. Compared to their classmates, the children of migrant workers more frequently fell ill; they were more likely to express anger, confusion, and apathy; and they performed particularly poorly in school. Other studies of this population show a rise in delinquency and child suicide. When such children were asked whether they would also migrate when they grew up, leaving their own children in the care of others, they all said no. See, Barbara Ehrenreich and Arlie Russell Hochschild (Eds), *Global Woman: Nannies, Maids and Sex Workers in the New Economy*. Granta Books, London, 2003.

<sup>3</sup> . Prof. Thomas Franck, *The Emerging Right to Democratic Governance*, 86 A.J.I.L.46 (1992). Prof. Thomas claims that democracy is a growing trend of the international affairs. He argues that democracy is essential both for preserving the peace and human rights.

<sup>4</sup> . Prof. Oloka Onyanga has suggested that one primary reason for the failure of effective implementation of economic rights in Africa has been the maintenance of centralized power, often through one party government. See, Prof. J. Oloka Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 Cal.W.Int'l L.J. 1, 41 (1995).

vested interests, rebellions and incidents of terrorism have rendered the democracy 'a mockery'. The protection of rights of people is thus a serious challenge facing the region.

In this context, this article has made efforts to analyze the issue of 'right to an adequate standard of living' from the prevalent values perspective also.

## **CONCEPTUAL STANDING OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING:**

The right to an adequate standard of living is dealt here inclusive of the right to development and social respect and dignity. This right is a major aspect or component of the economic right. The prevailing international economic order, therefore, has inseparable bearing on the right to an adequate standard of living. The developing countries' situation is becoming increasingly deplorable for several factors, the unfair trade relations between developed and underdeveloped countries. The economic globalization is punishing than rewarding the poor countries. Rudolph Walsh has rightly remarked:

*"In the economic policies of the government, one finds not only the explanation for its repressive crimes, but also a greater atrocity with punishes millions of human beings with carefully planned misery".<sup>5</sup>*

The international economic order is a serious hurdle or backlash for the progressive consolidation of the economic rights as equally indispensable human rights. However, economic rights currently maintain a subordinate status, as the primary importance is being given to the civil and political rights.<sup>6</sup> Economic rights are inseparably linked up with social rights, and they both are cornerstone or prerequisite for practical realization of the civil and political rights. The civil and political rights are ultimately fruitless in absence of the economic rights. This assertion requires emergence of a strong movement seeking incorporation of the socio-economic rights in international legal discourse with the same attention that is paid to civil and political rights. The objective of the movement should be to ensure 'protection against economic exploitation of the people of this third world' as well as to guarantee the right to an adequate standard of living to through providing equal access to material resources and quality opportunities.

Succinctly, the concept of the right to an adequate standard of living implies a concretely entrenched condition of 'socio-economic justice' to the people, with urgent emphasis on the deprived and marginalized communities in particular. Meanwhile, it implies a pro-active attitude to materialize the said need in practice, and for that it demands for pro-active and democratic changes in the system of governance and existing socio-economic settings. In the given political context of the South Asian region, the issue of right to an adequate standard of living is closely linked up with the need of consolidation of the democracy.

The ultimate goal of the socio-economic justice is to protect the 'right to life, which necessarily includes those conditions that are necessary for a dignified life. The sweep of The Supreme Court of India in a case has rightly maintained:<sup>7</sup>

*"It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law.*

<sup>5</sup>. *Open Letter to the Argentinean Junta, reprinted in Richard Falk, Comparative Protection of Human Rights in Capitalist and Socialist Third World Countries, 1 UNIVERSAL HUM. RTS. 3. (1979).*

<sup>6</sup>. See, e.g. Abram (USA), E/CN.4/Sub.2/SR.24, at 6 Paras, 19-21.

<sup>7</sup>. *Basheshar Nath v. The Commissioner of Income Tax Delhi (1959), Supp. 1 S.C.R. 528.*

*The equally important facet of that right is the right to livelihood because; no person can live without the means of living, that is, the means of livelihood”.*

Availability of adequate and nutritious foods for sustenance and protection of the means of earning livelihood is the most primary condition for socio-economic justice. The protection of the livelihood is a basic guarantee for the 'socio-economic justice. The deprivation of the 'livelihood' thus amounts to be a denial of the “socio-economic justice”. In turn, the denial of socio-economic justice necessarily means deprivation of the “right to life”. It is, therefore, legitimately argued that if the right to socio-economic justice is not treated as a precondition of the right to life, it would be the easiest way for depriving a person of his/her right to life. Breaking of the link between the concept of socio-economic justice and the right to life would provide the state an 'excuse to starve the people', and thus will be politically able to suppress the 'unliked' ones". The socio-economic justice has thus no meaning or standing in oblivion of the right to an adequate standard of living.

The socio-economic rights are inseparably interlinked and interdependent, and the deprivation of one will create a ‘cyclic impact’ on the whole perspective of socio-economic justice. The lowered social condition or deprivation of social justice, for instance, necessarily and successively results in economic deprivation, which is, as a widely recognized factor, a major cause of social marginalization.<sup>8</sup>

Both in concept and implication, the right to an adequate standard of living comprises socio-economic well-being of individual person as well as his/her family. Specifically, this right includes provision of adequate food, clothing, housing, medical care and necessary social services. The right to security in events of unemployment, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond his/her control is another essential component of the right to an adequate standard of living.<sup>9</sup> Denial of these basic needs of human being virtually amounts to be a deprivation of the ‘right to life’. A nation failing to recognize and guarantee these basic rights (often expressed in the forms of basic needs) can be termed as a ‘failed state’ in the premise of governance. The state's political legitimacy is dependent on its level of recognition and protection of the 'right to an adequate standard of living'. Obviously, this right maintains a heavy bearing on democratic governance. A government's legitimacy is in fact grounded on fact of recognition and guarantees the right to an adequate standard of living. This is evident from ICESCR's following provision.

State parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are required to adopt, inter alia, the legislative measures necessary to realize the right to an adequate standard of the living, the right to adequate food being the most important component. Pursuant to the obligation created by the covenant, several states have enshrined the provisions on the right to food in their constitutions. In the South Asian region, India, Bangladesh, Pakistan and Sri Lanka have explicitly enshrined into their constitutions the obligation of the states to provide an adequate standard of living to their citizens.<sup>10</sup> The Nepalese Constitution, however, does not explicitly

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<sup>8</sup>. See, Matthew C. R. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development*. 8 (1995), Cited from Zeshan Khan, *International Economic Rights*. <<http://law.gonzaga.edu/borders/khan.htm>>

<sup>9</sup>. <<http://www.un.org/pubs/cyberschoolbus>> Also see, Article 25 of the Universal Declaration of Human Rights.

<sup>10</sup>. Bangladesh: "It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement of the material and cultural standard of living of the people, with a view to securing to its citizens...the provision of basic necessities of life, including food, clothing, shelter...." (Article 25)

commit the state to take obligation to provide inadequate standard of living. In article 25, it outlines the following references in the forms of directive principles of the state:<sup>11</sup>

- Promotion of the condition of welfare on the basis of the principles of an open society by establishing a just system in all aspects of national life, including social, economic and political life.
- Transformation of the national economy into an independent and self-reliant system by preventing the available resources and means of the country from being concentrated within the limited section of the society.
- Establishment and development, on the foundation of justice and morality, a healthy social life by eliminating all types of economic and social inequalities.
- Enjoyment of the fruits of democracy through wider participation of the people in governance.

Raising the standard of living of the general public, through development of the infrastructure such as education, health, housing and enjoyment of the people of all regions, has been enshrined in the constitution as one of the directive policies of the state. It is clear from allusions above that none of the constitutions in this region has recognized the 'right to an adequate standard of living' as the fundamental right to be enforced judicially. The following societal notions or values have negatively affected the process of popularization or enforcement of the right to an adequate standard of living:

1. The South Asian region, like many other economically developing or underdeveloped parts of the world, is immensely influenced by belief on 'fatalism' as a deeply rooted value governing the general life of people. As one of the most evident implication of the practice of 'fatalism', the wealth or economic prosperity has been taken as a 'gift' of the god and the poverty a 'curse'. A poor is 'born poor' as he/she has been condemned by the god to be so. The economic disparity is thus constructed as a 'godly phenomenon'. The economic disparity is thus an instrument of perpetuating the concept of 'hierarchical structure'.
2. The states' policies and plans as well as the legislative measures are indirectly but pervasively influenced by the widespread belief on 'fatalism'. It ignores or rejects the 'ideology of equality' among peoples from different classes, faiths, sexes and social origins. Fatalism does reinforce the 'static condition' in the life. A woman, for instance, is required or expected to learn only those skills or arts of life, which are necessary for being a good mother or wife. Similarly, a poor must serve the rich for his/her better protection. The fatalism as a value is obviously antagonistic to the concept of equality.
3. In the South Asian region, the widespread practice of feudalism is another strong value system that determines norms of, or basis for, 'inter-personal relations between

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India: "The state shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health." (Article 47).

Pakistan: "State shall provide basic necessities of life, such as food, clothing, housing, education and medical relief (article 38).

Sri-Lanka: "The State is pledged to establish in Sri-Lanka a democratic socialist society, the objectives of which include... the realization by all citizens of an adequate standard of living for themselves and their families, including food, clothing and housing." (Article 27).

<sup>11</sup> . Article 25 of the Constitution of the Kingdom of Nepal, 1990.

members of the society. Feudalism promotes a concept of 'dominant class or groups' ownership over the means of livelihood or material resources'. The ownership of the land, which constitutes the major means of livelihood in countries like ours, is supposed to be exclusively controlled by the landlords or peoples coming from certain privileged clans. Of course, the ownership of the land is an important source for acquiring 'status'. The equality in material resources is therefore hindered by the feudal concept of 'social status' based on land holding. Obviously, the government of our regions have less motivation towards 'land reform' programs; rather they are indirectly against or apathetic to 'rational distribution of land holdings' to the needy. The right to an adequate standard of living is contrary to the feudalistic value concerning means of economic prosperity.<sup>12</sup>

4. It has been a strongly grounded belief in our region that 'poverty' is an outcome of the lacking of 'resources'. In fact, the poverty has largely been an outcome of 'lacking of proper resource management' and 'quality opportunity for employment'. Lacking of 'quality opportunity for employment' and the rampant poverty maintain a 'cyclic consequential relation'. An untrained bus 'cleaner', for instance, strives to address the need of daily foods, and thus is incompetent for development of the skills to 'enrich his/her quality to upgrade'. Education and empowerment constitute the major instruments for attaining the right to an adequate standard of living. However, as the material resources are fully controlled by the socially high-strata groups, the development policies and plans of the governments are hardly directed to the benefits of the disadvantaged and marginalized groups. This phenomenon obstructs the process of building an equitable social equilibrium, thus pushing the weaker groups towards marginal lines. This condition can be defined as an absence of 'socio-economic justice'.
5. As an outcome of the feudalistic and fatalistic notions and practices, the 'work' is condemned or degraded. An individual who really need not work is defined to be a 'lucky person'; he/she is described as the favorite of the 'god'.<sup>13</sup> This notion of thought destroys the 'culture of work', which in turn divides the society between those "who are constantly and continuously served" and "those who are constantly and continuously serving". Continuity of this division demands for existence of two classes of people severely affecting the prospect of 'popularization and enforcement of the right to an adequate standard of living.

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<sup>12</sup> . In Nepal, the grant of land used to be a reward to be given by the government to persons for their special service to the nation. The concept of '*birta*', which provided an exclusive ownership over the land, was used as the most important instruments of the land administration in Nepal. The practice of "big land holding by elite class of people" emerged out of the system of *birta*. It was abolished by the democratic government in 1959 through a statute. In practice, however, the powerful control of elite class over the land continued, depriving thousands of people from livelihood. In the last 50 years, there have been several commissions constituted to address this problem without any success. The successive failure of the governments to address the land issue has been linked up as a factor for the emergence of present crisis in Nepal. Nepal has been facing a serious problem concerning land management system in two folds: Firstly, actual farmers lack ownership over the land; and secondly, the fragmentation of the land has become a serious problem in itself, which negatively affects the productivity of the land. Migration from hills to flat lands, uncontrolled urbanization destroying productive lands and impeding possibility of agricultural mechanization are by products of the poor land management system.

<sup>13</sup> . In the Nepalese society, a woman who need not work is supposed to be a 'luckiest' woman. This perception is so pervasive that parents hunt for rich families for their daughters' marriage, so that they must not work. This perception also applies to boys. Generally, men in the Nepalese society look for rich wife than professionally competent wife.

6. Moreover, in our societies the professions are categorized and judged in accordance with the 'social status of person involved in the given profession'. A black smith's work is down graded because the black smith's social stratum is placed at the bottom line. Equality will thus challenge the 'so-called higher social stratum' enjoyed by socio-economic elite group. Obviously, any efforts to achieve equality might resisted by the elite segment of the population.

These factors play crucial role in minimizing the prospect of enforceability of the 'right to an adequate standard of living' within the legal regime of our societies. These factors are obviously responsible for obstructing the constitutional and legal process of recognizing the fundamental characters of the rights like standard of living, development, education, etc. The values associated with fatalism and feudal practices are constructed as cultural identity of the society thus 'blocking or preventing' prospect of enforceability and justifiability' of the economic and social rights.

### **ISSUE OR CONCERN OF JUSTICIABILITY OF THE SOCIO-ECONOMIC RIGHTS:**

The concept of 'judicial non-enforceability' of the directive principles is primarily responsible for courts' traditional approach to accept justiciability of the socio-economic rights. Many of these rights are taken as 'institutional interests' rather than entrenched rights of the people, and as such there is a belief that it would be difficult or not feasible for judicial process to 'enforce those claims that are not concrete and crystallly entrenched by the prevailing laws. Legalists believe that courts have no jurisdiction to enforce something that is not clearly established by the law as a right. This notion is detrimental to the emergence and institutionalization of the concept of 'justiciability'.

The issue of non-justiciability is thus a complex outcome of the following wrong perceptions:

- Socio-economic rights are merely general interest of people which are not capable of enforcement by the courts,
- Rights are products of laws, thus their existence is dependent on state's consent or choice to enforce. Socio-economic interests of people are abstract values rather than the enforceable rights.
- Socio-economic interests of people are development concerns of society instead of matters for judicial intervention.
- Socio-economic rights are collective interests of the people, so that it would impossible for a single individual to assert or enforce them.
- Some people argue that human rights derive legitimacy from natural laws that supports civil and political rights but not economic rights.<sup>14</sup>
- A contention is also made that unlike civil and political rights, economic rights, because they are positive rights, are subjected to the availability of appropriate resources before they can be implemented effectively.<sup>15</sup>

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<sup>14</sup> . Although the UN now generally considers economic and social rights to be indivisible from civil and political rights, little action has been taken to set the stage for the proliferation of economic rights. See, Proclamation of Teharan,33 U.N.GAOR, Resns., Supp. (No.45), at 150 (1977).

<sup>15</sup> . *Supra* note 14.



These perceptions, however, fail to realize that the issue of socio-economic rights concerns the overwhelming population's interests for better and secured life. Those who argue about the non-justiciability of the socio-economic fail to understand that lives of millions are at stake; their livelihood, health, education and development are at stake. State's failure to address these concerns of marginalized and disadvantaged sections of the population is a root cause for dark future of these millions of people. The disparity in matters of equitable distribution of resources is what causing an incredible gape between the peoples.<sup>16</sup> The demand for justiciability of socio-economic rights thus challenges the traditional paradigm of the 'justice' or theories of jurisprudence that are essentially founded on the notion of centralist legalist approaches.

Many of the problems facing the vast majority of the population are outcomes of the irrational, exploitative and inequitable distribution of the material resources, service delivery and opportunities. In one case, the Supreme Court of India, while rejecting the plea of the government that the slum dwellers of Bombay city had failed to adduce evidence to show that they would be rendered jobless if they had been evicted from the slums and pavement, viewed that the main reason of the emergence and growth of squatter-settlements in big city like Bombay, is the availability of job opportunities which are lacking in the rural sector. The court convincingly expressed that these facts constitute empirical evidences to justify the conclusion that persons in the position of petitioners (slum dwellers) live in slums and on the pavements because they have small jobs to nurse in the city and there is nowhere else to live.<sup>17</sup>

As it is evident, millions of people live in a given type of live condition because they have no other options for them. In rural villages, women die because they get no medical support. In squatter-settlements, children are dying because there is no medical care to address the diseases like tuberculosis, malaria, and other various forms of transferable sicknesses. The socio-economic rights in this perspective do not simply mean affairs needing development interventions, but they are, most importantly, the matter of concerns of 'justice' and as such require the attribute of justiciability, so that they are tested or tired by the courts on the basis of authentic empirical data.

Is it wise for the court to intervene in cases where the investigation of the government policies and programs is starkly obvious? Many people still have strong skepticism about the justiciability of the socio-economic rights. Traditionally, it is suggested that the judiciary must maintain a 'self-restraint' in issues where the policies or programs of the government are concerned. This opinion or theory obviously discards the omnipotence of the 'fundamental or human rights'. A simple fact is that the state and its machinery, including judiciary, exists for the service of the people, and as such they simply cannot 'close their gates' for the sake of mere formalism.

The governance, of which fair, objective and impartial justice is an indispensable element, cannot be a 'robotically' formalized system; it cannot ignore people's concern with any excuse. The Supreme Court of India's decision on *Smt. Ujjam Bai v. State of Uttar Pradesh* (1963)<sup>18</sup> refers to three classes of cases, if the jurisdiction to deal with writ petitions under Article 32 of the Indian Constitution is concerned, in which the question of enforcement of the fundamental rights would

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<sup>16</sup> . Martin. 80% of the total GDP in Nepal is used by 20 % of the population, whereas the rest 80% is compelled to live with 20% of the GDP. The elite groups of the society thus exclusively enjoy the fruits of the economic development of the country. This group benefits from the most part of the service delivery of the state, but unfortunately it is hardly loyal to the nation. This group has been monopolizing in the education system but it hardly works for the society. Most part of the human resource persons thus generated migrates to developed countries after benefiting from the educational or service delivery system funded by the tax of the poor people.

<sup>17</sup> . In Re: Santa Ram (1960) 3. S.C.R. 499.

<sup>18</sup> . 1963, 1 S.C.R. 778.

arise, namely (1) where action is taken under a statute which is ultra vires the Constitution; (2) where the statute is intra vires but the action taken is without jurisdiction; and (3) an authority under an obligation to act judicially passes an order in violation of the principles of natural justice. The socio-economic right which directly concern with the right to life cannot be considered to be out of the scope of the judicial review.<sup>19</sup> It is unquestionably believed that the right to life includes the right to livelihood and dignified conditions attached thereto, including a right to an adequate standard of living. Obviously, denial of right to livelihood would be a deprivation of the right to life and as such the violation of the constitution and the international human rights instruments.

## **DEVELOPMENT CONCERNING THE ACCEPTANCE OF 'JUSTICIABILITY' OF THE SOCIO-ECONOMIC RIGHTS:**

Against many people's wrong perception, one can argue that the socio-economic rights have existed for many years, predating the UN Charter.<sup>20</sup> Some people have argued that economic rights have had a place in the international human rights regime longer than civil and political rights. However, the credit of bringing the international legal discourse on the economic rights goes to the American President Franklin D. Roosevelt, who characterized the 'economic rights' as the "freedom from want", which includes the right to a useful remunerative job, the right to earn enough to provide adequate food and clothing and recreation, the right to every family a decent home, the right to adequate medical care and the right to adequate protection from the economic fears of old age, sickness, accident, and unemployment; and the right to good education.<sup>21</sup> The ICESER expanded these ideas to include economic self-determination, favorable working conditions and the right to trade union.

Following the establishment of the UN, the economic rights had been more focused by the socialist countries, headed by the former Soviet Union. Obviously, for the western world the emphasis on the socio-economic rights smelt a 'fear of socialism'. The expansion of First World welfare model to include the "right to work, right to development, right to social service, right to adequate health were taken suspiciously close to socialist paradigms and was thus avoided for political reasons.<sup>22</sup> Obviously, the enforcement of the Covenant on Economic, Social and Cultural Rights was intentionally pushed back by the western countries. In fact, this convention was viewed

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<sup>19</sup> . Olga Tellis v. Bombay Municipal Corporation and ORS.ETC. (1985.07.10) Supreme Court of India. In this case CJ Chandrachud, while presenting his view, held: "The right to life which is guaranteed by Article 21 includes the right to livelihood and since, they (slum dwellers) will be deprived of their livelihood if they are evicted from their slums and pavement dwelling, their eviction tantamount to deprivation of their life and is hence unconstitutional. For the purpose of the argument, we will assume the factual correctness of the premise that if petitioners are evicted from their dwellings, they will be deprived of their livelihood... The sweep of the right to life is conferred by Article 21 is wide and far reaching, It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right life. An equally important facet of that right is the right If the right to livelihood because, not person can live without means of living, that is the means of livelihood. If the right to livelihood is not treated as part of the constitutional right to life, the easiest way of depriving person his right to life would be to deprive him of his means of livelihood to the point of abrogation."

<sup>20</sup> . Zeshan Khan, Id.

<sup>21</sup> . Eleventh Annual Message to Congress (Jan. 11, 1944), in 3 the State of the Union Messages of Presidents, 1970-1966, 2875, 2881 (Fred L. Israel ed., 1966).

<sup>22</sup> . Phillip Alston, *US Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 A.J.I.L. 365, 366 (1990). Alston claims that Americans tend to think of the ICESCR "less as an international treaty seeking to promote the satisfaction of basic materials needs that as a "Covenant on Uneconomic, Socialist and Collective Rights". Id.

to be a socialist manifest thinly veiled under the traditional rights analysis.<sup>23</sup> The domain of the socio-economic rights thus remained stagnated. The overwhelming emphasis on civil and political rights was thus not a coincident; it was rather planned phenomenon geared up by the western countries which, indeed, seriously jeopardized the interests of millions of disadvantaged and marginalized peoples of the third world countries. For them the regime of human rights hardly meant something more than a 'myth'.

The campaign for popularization and enforcement of the socio-economic rights took momentum following the demise of the Cold War and the disappearance of the Soviet Union, the western latent fear of socialism subsided and there has been an increase in the amount of international efforts to press the enforcement of the ICESCR and academic literature promoting the rights. The increasing pro-active approach of the judiciary in third world countries and the emerging civil society consciousness that the 'recognition and guarantees of socio-economic rights' is a solution to number of conflicts and chaos are surfacing with added strengths.

The emergence of the economic rights can also be traced back to the formation of the International Labor Organization following the World War. However, ILO's focus was on regulating certain aspects of the employer-employee relations rather than on larger macro-economic dimensions of the economic and social policy.<sup>24</sup> The ratification of the UN Charter brought forth the first international reference to the protection of the economic rights, although they were not labeled as such. The Charter referred to the 'higher standard of living' as one of the instrument for maintaining friendly relations among the states as the prevailing economic conditions of many countries themselves had been recognized as one of the threat to peace. As some people argue, the reference to the standard living, economic progress and development of the people of the world had been a response to increasing decolonization and the need of maintaining cooperation between the newborn states and former colonizers.<sup>25</sup>

In three years later of the establishment, the UN adopted the Universal Declaration of the Human Rights, which formally endorsed the "standard of living adequate for the health and well being himself and his family, including food, clothing, and medical care and necessary social services, and the right to security in the vent of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control" as one of the human rights. The language used by the UDHR was vague. In 1966, the ICESCR made attempt to address the issue in concrete terms. However, the ideological dispute between the capitalist and socialist states largely overshadowed the possibility of the ICESCR emerging as an enforceable international human rights law. The Western states asserted that civil and political rights took priority over economic rights because they were the foundation of liberty and democracy in the free world.<sup>26</sup> The Soviet allies promoted social and economic rights as the basis of for socialist society.<sup>27</sup> The ideological conflicts between the western and Soviet allies were responsible for stagnation of the economic rights. The following facts illustrate the negative and positive developments the conflict:

1. The ICESCR had been overshadowed by ICCPR. Although, the Soviet Union ardently advocated for social and economic rights, the mechanisms within its political system had

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<sup>23</sup> . Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward an Entirely New Strategy*, 44 Hastings, L.J. 79, 119 (1992).

<sup>24</sup> . See Colleen Shepard, *A Review of Lucie Lamarche, Perspectives Occidentales du Droit International des Droits Economiques de la Personne*, 41 MCGILL.L.J. 907 (1996).

<sup>25</sup> . Louis Henkin Quoted from *Supra* note 14. 1981.

<sup>26</sup> . Mathew C.R. Craven, *The International Covenant on Economic, Social and cultural Rights: A Perspective on Its Development*. 9 (1995).

<sup>27</sup> . Id.

hardly any place for development of these rights as inviolable international human rights of individuals. These rights in the Soviet polity were rather used as an instrument of the international legitimacy of the socialist system.

2. In the western countries, where the social and economic rights had been viewed as instruments of socialism, the national governments hardly took efforts to develop mechanisms for their enforcement. Rather the jurisprudence of the west made attempt to define such rights as 'institutional interests' of the people, not capable of direct intervention by the courts.<sup>28</sup> The development of the jurisprudence of economic rights thus took no momentum. The principle of indivisibility of the human rights was thus politically subjected to a setback.
3. Since ICESCR failed to receive enforcement momentum owing to conflict between the First and the Second World, it forced the peripheral nations to begin enacting regional agreements.<sup>29</sup> Although these agreements embodied the specificity of the ICESCR, but they did contextualized the language to reflect the regional concerns and ideals. The principle of the universality of the economic rights thus suffered. The regional contextualization legitimized the attempt of nations to ignore the significance of the economic rights on the excuse of 'scarcity of the resource'.

These constraints have caused the advancement, implementation and protection of socio-economic rights fallen behind civil and political rights. In this context a remark of the Committee on Economic, Social and Cultural Rights is worth mentioning:

*"The international community as a whole continues to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights."*

The implementation or effective enjoyment of the civil and political rights is indispensably dependent on the preservation and guarantees to the socio-economic rights. Considering their indivisibility, the Teheran Framework, which identified four pillars of regional human rights technical cooperation, recognized the crucial role of the judiciary in promotion and protection of human rights. Building on the inspiration from the Teheran Framework, the Office of the UN

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<sup>28</sup> . Bodenheimer classified the rights as concrete and institutional rights. Social and economic rights of the people had been seen as 'institutional interests', which existed below the level of rights, in the sense of genuine individual claim to be enforced by the court. Obviously, many social and economic rights did not surface 'in the judicial process of the western countries'. Less priority to these rights was also placed due to absence of 'the problem of abject poverty' in the west. The poverty and starvation was mainly the problem of Asia, Africa and Latin America, where most of the societies had been ruled by dictators. The judicial enforcement of the rights had hardly feasible and likely in these societies.

<sup>29</sup> . For example, the European Social Charter enumerated the work related rights of the citizens of signatories. The Organization of the African Unity (OAU), through Banjul Charter, focused primarily on the self-reliance of African countries amongst themselves in an attempt to separate themselves from their former colonizers. In Latin America, the Protocol of San Salvador established the rights to work, to have access to trade unions and social security and the right to health. These regional arrangements, though present regional priorities and as such are not antagonistic to ICESCR, minimized the potentiality of the emergence of the universal pressure or force in favor of the enforceability of the economic rights. Thus, despite obligation under the covenant to enact legislative measures to enforce social and economic rights, state parties to the covenant took oblivious attitude to promote and strengthen socio-economic rights of the people. A trend of addressing the socio-economic rights through directive principles or states duties took momentum, which indirectly but effectively ruled out the possibility of justiciability of these rights.

High Commissioner for Human Rights' held a workshop of South Asian judges, on 17<sup>th</sup> November, 2001, viewing the need of promoting an understanding towards justiciability of the economic, social and cultural rights. This workshop explicitly recognized that human rights were indivisible and interdependent, and the rights enshrined in the International Covenant on Economic, Social and Cultural Rights contained in some national constitutions represented statements of clear legal obligation for the states concerned. The workshop also agreed that the principles set out in those documents gave direction to the States concerned and give content and meaning to the fundamental rights enshrined in those constitutions.

Although the workshop ruled out the traditional view of the justiciability, it seriously considered the factors that hindered the judicial intervention for the protection and enforcement of the socio-economic rights. The negative factors affecting the justiciability of the socio-economic rights identified by the workshop were as follows:

1. The inability of the large majority of persons in every society to have access to justice, and failure of States to remedy that inability,
2. The lack of awareness and in some cases the absence of interest in learning more, about international human rights standards on the part of the legal community,
3. The lack of understanding of the nature and legal and policy implications of international commitments,
4. Absence of awareness and indifference of government officials, in certain cases, in the implementation of those commitments,
5. Inadequate follow up to the public commitments such as plans of action and pronouncements made in international forum, and
6. The failure to implement the ICESCR fully.

The workshop showed its concerns to address this weakness by pledging to develop a jurisprudence of justiciability of the social and economic rights, and for that purpose adopted the following responsibilities to be taken by judiciary and other institutions:

1. Judiciaries must, in consistent with principles of Bangalore Declaration and Plan of Action, interpret domestic laws in conformity with the international human rights instruments.
2. Judges must take steps or initiatives to call the government to provide information regarding the policies and programs and expenditures allocated by it for the implementation of the socio-economic rights.
3. The national human rights agencies like National Human Rights Commission must play pro-active role in monitoring the performance of the legislative and executive branches of the State in the area of socio-economic and cultural rights. Such institutions must also play role in providing to the judiciary the information about jurisprudence and documents generated by the international human rights mechanisms. The role should include the monitoring and reporting on the implementation of policies regarding socio-economic and cultural rights.
4. Judiciary must use the public interest litigation to enhance the justiciability of the economic, social and cultural rights.
5. Judges must be concerned to protect the vulnerable from helplessness due to arbitrary and discriminatory action; ensure the right to adequate housing of the people; and ensure that no forced evictions were conducted, except in exceptional cases on satisfaction of the

mandatory conditions such as consultation with persons who would be affected, reasonable notice, hearing prior to eviction, opportunity for legal redress and provision of the right to adequate housing in the alternate location.

6. Judiciary must examine the right to health in a comprehensive manner, so as to include prevention, cure, rehabilitation, easy access to health services and attainment of core minimum standards which state parties were committed to implement under ICESCR.
7. The judiciary, as the servant of people, should share the urgency of the people that the objectives of the ICESCR should be fully attained and its provision given effect as far as possible.

## **CHALLENGES FACING THE ENFORCEABILITY AND JUSTICIABILITY OF THE SOCIO-ECONOMIC RIGHTS**

Effective and efficient enforcement of the economic rights (ICESCR in general) face number of challenges, which can be outlined as follows:

1. Unfettered expansion of the open market or privatization of the economy has fostered an incredible disparity between the wealthy North Atlantic countries and the world's poor.<sup>30</sup> The disparity is created by, inter alia, exclusion of poor countries from the benefit of economic development and international trade and commerce, as these nations hardly competent to compete with them in the one hand, and in the other, the laws of the western countries are hardly liberal to poor countries in matters of trade and commerce.
2. The multinational companies from the west are exploiting the labor and material resources in the poor countries for their sole benefits, and in the cost of a penny. The west has been seen conservative in economic laws, which are framed to keep things in their sole benefits. The intellectual property law, for instance, generally benefits the western countries. Many laws of the western countries block the poor countries' access to their market unhindered.<sup>31</sup>
3. The historical colonialism is another significant cause of the economic disparity, which left many currently poor states prone to poverty and debt. The abject condition of poverty in such countries has increased the dependency and wealthier countries, which has retarded economic rights. The guided development has further been intensified by World Bank and other powerful funding agencies. This factor may significantly reduce the 'scope of the right to economic self-determination'.<sup>32</sup>

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<sup>30</sup> . Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, MAASTRICHT, Jan. 22-26, 1997.

<sup>31</sup> . *Supra note 14*.

<sup>32</sup> . The level of the poverty in Nepal compared to last 20 years has gone up from 33 to 41%. The volume of the debt on per-capita has significantly increased. The huge chunk of the revenue collected from the mobilization of internal sources goes to 'debt service'. While the open market economy has induced consumerism, the purchasing power has slid down. The coca-cola is replacing the water even for poor labor force. The condition created by the dependent economy has been increasingly retarding the possibility of enforcement of the right to an adequate standard of living. See for detail discussion on the situation, Working Paper (unpublished) on "Poverty Alleviation" prepared by NGO Federation for Civil Society's regional and national

## CONCLUSION

Human rights are indivisible. They are interdependent. The prospect of economic rights is dependent on consolidation and sustainability of the democracy, and the sustainability of the democracy is dependent on the institutionalization of the socio-economic justice. Civil and political rights are ultimately fruitless without heeding the constraints laid out by economic rights conventions as the International Covenant on Economic, Social and Cultural Rights. One of the major challenges to enforce the economic rights is preparedness of the national judiciary to intervene judicially. The concern, therefore, must focus on preparing the judicial system to act proactively to the 'issue of justiciability of the economic rights as omnipotent human rights'.

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meetings on "National Development Forum's Meeting in Kathmandu, 4-5<sup>th</sup> May, 2004. Source, NGO Federation, Katmandu Nepal.