

4th to 24th December 2011

7th

International Residential School on Economic, Social and Development Rights, and Good Governance

with Special Reference to Law and Development



Organised by:

Kathmandu School of Law (KSL)

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Preface

ECONOMIC and social rights of people are directly concerned with development and basic needs of human beings. Protection and promotion of such rights not only empowers persons, but also contributes to the increased participation of them in political process and governance. Recognition and protection of economic and social rights is thus a prelude to consolidation of inclusive democracy. Without recognition and protection of economic and social rights, civil and political rights are remaining meaningless, and vice versa.



The prospect for protection and promotion of human rights of people, the disenfranchised groups in particular, is unimaginable or unthinkable in absence of inclusive democracy, rule of law and good governance. Safeguarding of basic liberties is possible only with equitable distribution of development opportunities and resources, with priority to weaker sections. Of course, the existence of every individual member in the group cannot be isolated from his/her group. The individual freedoms and group rights co-exist and the recognition and protection of each contributes to create an environment conducive for enjoyment of other.

When we look at the South Asian situation, socio-economic and political exclusion of the disenfranchised community is a serious problem. The vast majority of the population in and around this region is still deprived, exploited and alienated from development opportunities. A significant number of children in these countries die of malnutrition and lack of access to basic medical care. Many children are born defective simply because their mothers had no adequate nutritious food. Thousands of mothers die due to unavailability of obstetric and maternity services during pregnancy and child birth. A large part of the child population is deprived from educational opportunities and thus they are compelled into the labor market. Child marriage is still a problem, and, most seriously, the sexual violence and exploitation of adolescent girls and women is a serious problem. Safe drinking water and the tolerable standard of living is still a myth for millions. The overwhelmingly larger part of the population in this region and its surrounding countries is economically poor, socially excluded and politically suppressed. While China and India have boosted up their economy and the gross national income, the benefit of the economic development is still far from reach of the rural poor people. The larger part of the GDP in all these countries goes to a smaller group, pushing the majority population towards marginalization. Hence, in-depth analysis and discussion on such issues is thus necessary.

Kathmandu School of Law (KSL) has been playing a crucial role in promoting advocacy of indivisibility of human rights for the last seven years. It believes that the prospect of good governance can be enhanced by promoting economic and social rights along with civil and political rights. The protection and promotion of human rights is inseparably related with the good governance and devolution of powers and vice-versa. While the consolidation of good governance strengthens the prospect of respect for human rights, the later significantly contributes to 'democratize the government institutions'. With this view, KSL has been organizing this 'residential school for students' and 'interactive dialogue of professors' on economic, social and development rights, and good governance for the last five years. Since 2005, this school has been transformed into a platform of law scholars and professors from South Asian region. In 2007, the scope and modality of the program was significantly extended with participation of representatives from South Asia, South East Asia, and African countries.

The platform provides an opportunity for young law scholars and professors to deeply understand the significance of economic and social rights and their relationship with good governance in order to address the problem of exclusion of vast majority of population in the region. The mission is to generate a new leadership for the 'system of governance' and 'institutional capacity building to protect the rule of law and human rights'. The program sincerely commits to develop a culture of human rights and democratic functioning of the governance, with special care and protection of marginalized and disenfranchised groups.

I am confident that the program will be able to 'create a linkage between the democracy and need of economic and social transformation of the society'. It will also be helpful to import best practices of other countries in this regard, and in the meantime will provide an opportunity to learn from their problems and experiences. At the meantime, I take the opportunity to share my impression that funding agencies are more focused on the enforcement of civil and political rights and are not found positive to support the activities to promote the socio-economic and development rights. But, civil and political rights, I believe, are meaningfully enforceable only if the economic and social rights are respected, recognized and protected.

Prof. Dr. Yubaraj Sangroula
Prof. Incharge

Message

IT IS our great pleasure to step on the 7th year of International Residential School on ESDR. This School is an attempt of Kathmandu School of Law in collaboration with several counterparts in South Asia and surrounding countries to address the congenitally defective notion of human rights jurisprudence that bifurcates freedom and development, i.e. the division of civil and political and development rights in broader term. This school is a diploma course and has been significantly popular among scholars in Nepal and beyond. It is a platform where academia, development workers, government policy makers and civil society members engage in teaching human rights and its linkages with development, governance system, rule of law and democracy in an empirical setting. In the past seven years, over 250 students from Nepal and other South Asian and surrounding countries have benefited from this school.



This school will attempt to address issues of human rights in holistic perspective, that is to say that human rights are taken as an integrated instrument of promoting and protecting human dignity with special focus on poverty as a serious cause of violence and human rights violation. This year the school has taken up the issue of law and development and its impact on lives of vast majority of poor people. The core goal of the school in this year is to provide inputs to the stakeholders concerning development as a right of people and foundation of sustainability of democracy. Since the school believes on indispensability of freedoms and development as its core belief, the outputs generated in this regard will be helpful to make the Constitution, laws and policies more meaningful in this region.

At this juncture, I would like to express my sincere thanks to all the participants and resource persons for their encouraging and overwhelming interest and support to participate and contribute in the School. I am grateful to the Danish Institute for Human Rights, Danida/HUGOU, Center for Legal Research and Resource Development and the University Grants Commission for their financial support and cooperation to organize the course. I believe, their contribution is not only commendable but also substantive in promotion of democracy and human rights in Nepal and beyond.

Assoc. Prof. Geeta Pathak Sangroula
Executive Director

Message

INTERNATIONAL Winter School on ESDR is turning to its 7th year. Despite its infancy ESDR Winter School has been able to generate profound interests among students, teachers, judges, lawyers, researchers and other groups of people across the regions of Asia and beyond Asia. This is a welcome development for millions of those who are imprisoned in poverty and to whom human rights especially socio-economic rights are capturing golden deer.



Although human rights are the most fundamental requirements for a fully human life and only the human rights language can adequately convey what is at stake when human dignity and freedom are challenged, yet socio-economic rights have been trapped into Fundamental or Directive Principles of non-justiciable part of the national Constitutions in Asia. In many countries of South Asia, good governance hardly travels beyond paper document or academic discussions. Good governance and human rights are not only inextricably linked; they are also interdependent and mutually reinforcing. Good governance through certain defined standards enables citizens to enjoy human rights. On the other hand, human rights are measures to test the legitimacy of the governance. Therefore, a problem of good governance is also a threat to human rights.

I feel extremely privileged for being a part of ESDR School from its very inception. I am proud to see that ESDR School has been successful in capturing the attention and imagination of a broad cross-section of people. This is a hopeful sign to mobilize social forces to ensure that human rights laws and policies are put not only in place but also into practice.

Professor Md. Zakir Hossain
Dean, Faculty of Law
University of Chittagong &
Member, Bangladesh Judicial Service Commission



KSL

Kathmandu School of Law
Purbanchal University, Nepal



KSL: A seat of Global Learning

Kathmandu School of Law (KSL) was established in 2000 AD in affiliation to Purbanchal University, a state University. It is an emerging institution pioneering in the field of legal education and is dedicated to maintain high standards of academic excellence. Its prime objective is to address the need of an academically sound and practically feasible legal education in Nepal. It marks a paradigm in modern methodological teaching to generate future leadership in field of law and justice with special focus to work for the interest of the community. The school with its concrete foundation of effective management body and composite teaching personalities has been a motivating center for effective learning, innovative practices and substantial research. It keeps its firm commitment on serving students of diverse backgrounds who seek a quality and competent legal education inside the country.

Mission Statement

Kathmandu School of Law is committed to achieve excellence in research and academic scholarships in the field of law and justice and to reflect this in high - quality teaching and learning programs designed to meet the educational and vocational needs of its members.

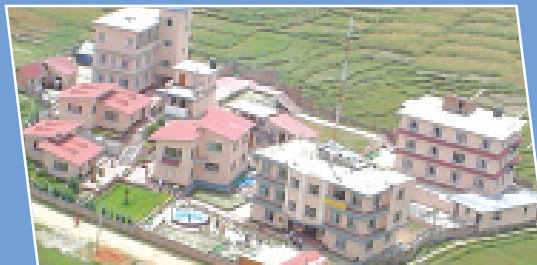
Features

- Participatory and pragmatic way of teaching
- Interdisciplinary forward-looking curriculum with wide subject areas that is competitive to other countries
- Institution to generate lawyers as social engineers who are committed to work for their community and nation at large
- Safeguarding unique values of indigenous legal system by generating trained legal resources avidly within the country

- Strong nexus with many law schools abroad having frequent exchange programs of teaching faculties and students
- Students' participation in national and international debate programs, regional and international moot court programs, symposium and residential programs with records of rewards and academic excellence awards

Clinical Legal Education Program

KSL runs clinical legal education program via two clinics: Women Victims Legal Aid Clinic and Prisoners Legal Aid Clinic. The program provides pro-bono legal counseling and representation to the indigent persons. Major components of the program includes, Internship at Supreme Court; Legal aid



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- Secretariat of South Asian Law Schools Forum for Human Rights (SALS FORUM).

Academic Program

- A) LL.B. Program
- B) LL.M. Program
- C) M.A. Program
- D) B.A. LL.B. Program

Kathmandu School of Law offers five years LL.B., two years LL.M programs and from this year five years B.A. LL.B. program has been initiated. It also offers one year interdisciplinary masters' degree in *Human Rights* and *Conflict and International Humanitarian Law*. Prime objective of the programs is to generate proficient and qualified professionals to cater the need of specialized human resources in various areas of law in the nation.

for women, marginalized and victims; and Child rights advocacy and legal aid. Students participate in the program as interns and Juniors to legal aid lawyers.

Library

The Library of the school is one of the extensive and well equipped law libraries in Nepal. It in houses about 19,000 resource materials including monographs, research reports, books, journals, periodicals, and other unpublished documents.

Child Right Research and Resource Center

Child Rights Research and Resource Center (KSL Child Rights Center) aims to strengthen research and sharing of information in the issues of child

rights at national as well as regional level. The primary objective of the Center is to build a competent rights regime in Nepal (and South Asia region) by establishing a capable institution to generate human and intellectual resources pertaining to child rights, development and psychology.

The Center has been established as an outcome of the commitment of different like minded institutions to work as joint venture to protect and promote child rights and access to justice. Save the Children Norway, Save the Children Sweden, UNICEF, Tdh Nepal, and CeLRRd deserve credit to initiate this important mission.

Community Outreach Program

KSL has engendered the concept of 'engaged learning'. Students are encouraged to learn by observation and critical analysis. Students' involvement in community outreach programs such



national and international institutions. National dignitaries, diplomats, ambassadors are invited frequently to interact with faculty and students and to share their views on the situation of the country. It provides a platform for students to learn about foreign affairs and international impression towards the country.

Promotional Programs

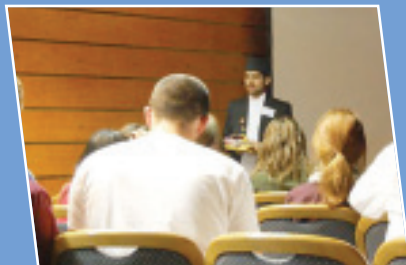
Besides launching academic programs, KSL also works as implementing body of different promotional programs that come under promotion of democracy, human rights, and rule of law, in partnership with different national and international civil society organizations. Students work as researchers and interns in such programs.

Moot Court Room

The school has constructed a well-setup court room for a simulation exercise on cases. Moot court practice is the important method of teaching law to prepare students for competent advocacy. This moot court room has been dedicated to learned advocate and judge Lava Dev Bhatta.

Online Internet Resource Center

An online internet resource center has been a priority concern of KSL to provide students an internet facility encouraging them to carry out online research as a part of their regular curriculum. The center assists students in learning through web by involving them



as conducting field study, involving in public awareness campaign and legal aid activities are prioritized along with regular class lectures.

Guest Lecture Programs

KSL maintains a practice of organizing a series of Special Lectures inviting dignitaries from reputed



into online legal research method.

A Networked Asia-Pacific Master's Degree in Human Rights and Democratization

KSL had launched a networked Asia-Pacific Master's Degree Course in Human Rights and Democratization in partnership with the University of Sydney to strengthen the framework for the protection of human rights, justice and the rule of law in the Asia-Pacific region and to promote democracy in the region. The ultimate objective of the Course is to ensure the protection and enjoyment of human rights by all the people in the region without discrimination along with the strengthening of the framework of democracy.



ESDR Overview

Economic, Social and Development Rights and Good Governance

Kathmandu School of Law (KSL) has been playing a crucial role in promoting advocacy of indivisibility of human rights for the last eight years. It believes that the prospect of good governance can be enhanced by promoting economic and social rights along with civil and political rights. The protection and promotion of human rights is inseparably related with the good governance and devolution of powers and vice-versa. While the consolidation of good governance strengthens the prospect of respect for human rights, the later significantly contributes to democratize the government institutions.

With this view, KSL has been organizing residential programs for students and interactive dialogue of professors on economic and social rights and good governance. Since 2005 the program has been organized in coordination with SALS Forum and has been transformed into a platform of law students and teachers from South Asian region and abroad. The platform provides an opportunity for young law students and teachers to deeply understand the significance of economic and social rights and their relationship with good governance in order to address the problem of exclusion of vast majority of population in the region. Programs in the past have made significant outcomes, which can be outlined as follows:

- Students have developed a tremendous sense of social responsiveness, and pro-activism towards protection and promotion of socio-economic rights of people. This has been evident from the enthusiasm of students to participate in civic education of grassroots communities. In 2005, KSL students organized

ESDR ALUMNUS

The ESDR Alumnus was formed in 2006 taking the responsibility to assist to organize the residential programs for the following years. Members of the Alumnus are as follows:

Mr. Ankit Jain, India	Chairperson
Mr. Rataphum Bausumlee, Thailand	Vice-President
Ms. Reena Pathak, Nepal	Treasurer
Ms. Sabrina Ali, Bangladesh	Secretary
Ms. Zhu Li, China,	Member
Mr. Farooq Azam, Pakistan	Member
Ms. Nima Om, Bhutan	Member

a series of activities such as research on social responsiveness of the media in Nepal, democracy orientation for secondary school students, filing of public interest litigation against exploitation of child workers, and the education of youths and students on constituent assembly to name a few.

- KSL students have been generating an environment conducive for enrollment of increased number of *dalit* and other marginalized students in legal education. They have been helping to establish scholarship funds and raise financial support.
- A regional hub of law students, faculties and rights activists has been established through ESDR Alumnus, which will be beneficial for regional collaboration on promoting socio economic and development rights, and good governance.

OBJECTIVE

The residential school was expected to address the following objectives:

- Promotion of increased regional academic and professional discussions on issues of good governance and its relation with economic, social and development rights;
- Promotion of research and consistent dialogue on human rights (economic and social rights in particular), inclusive democracy and good governance in academic institutions in the region targeting students, faculties, government experts and activists at the South Asian regional level;
- Development of a regional platform for academics and professionals for discussion on human rights (economic and social rights in particular), inclusive democracy and good governance;
- Enhancement of intellectual capacity building and human resource on these issues, with a view to assist in the process of constitution making in context of Nepal.



IMPRESSION AND EVALUATION OF THE COURSE:

The Course is first of its kind in the South Asian region as well as in the surrounding countries. It has been viewed extremely important in providing an international forum for many Nepalese faculties as well as students to test their ability and expertise. In context of Nepal, the Course has developed the confidence of KSL to organize and work as a leading institution in the region and surrounding countries on issues of economic and social justice, good governance and rule of law.

Productivity of the Course has been established by the following evaluation tools:

- a. Participatory Survey by the Participants: At the end of the program, all participants are given opportunity to evaluate the standards, quality and relevance of the Course. The analysis of the impressions of the participants establishes that the Course has played a significant role in enhancing the understanding about the several issues covered by the Course.
- b. Graphic evaluation of the individual participant presents his/her specific contribution in the interactions and workshops.
- c. The "Moot Court" Competition provides an opportunity to judge the knowledge of the participants on the practical skill of mooting and court procedure.



ACHIEVEMENTS

- A regional forum to promote study on Economic, Social and Development Rights and Good Governance has been established. The forum is the first of its kind in the region and surrounding countries. It has been catalytic to bring a number of law professors specializing on economic and social rights and good governance, and experts working for the vulnerable groups from good governance and rule of law-based approach. The forum has been proved crucial to gather a number of experts of the region and share experiences in this area.
- A regional network of law faculties, experts, students and rights advocates has been constituted to address the following objectives:
 - Building awareness on the economic and social justice to vulnerable groups as a milestone for sustaining democracy.
 - Developing a network for continuous communication and collaboration on issues of good governance and rule of law by exchanging information and experiences in respective countries.
 - Creating a pool of experts on the issues of economic, social and development rights and good governance.
 - Generating funds for sustainability of the course in future.
 - Launching publication on the given areas of issues.
- A comprehensive compendium on Economic Social and Development Rights and Good Governance has been developed that includes research reports, articles and workshop proceedings. This compendium is expected to provide rich resource materials for understanding of economic, social and development rights and good governance. This will also provide resource materials for the course in future.
- This Residential School has enhanced the capacity of KSL as a center for in-depth study and research on issues of economic, social and development rights as well as good governance.
- Importantly, the School has provided a rich input to the process of transformation of the Nepalese society. The problems faced by people in relation to the economic and social justice as well as good governance and the interventions designed by the Course to address such problems will provide a rich insights for the Constituent Assembly while making the new constitution in Nepal.

Selection of the Participants:

Law students from South Asian region or abroad, who have interest in the area of human rights and good governance are eligible to apply for the course. Additionally, interested personnel of legal field, individual or representative from the institutions working in the related area are also encouraged to apply.

Selection of participants is carried out on the basis of their knowledge, interest, and motivation on the course.

Curriculum:

In depth and extensive curriculum is developed by experts in various aspects of socio economic and development rights, and good governance. The curriculum is designed as a short term diploma course.

Course Registration:

Registration fee for

Nepalese Participants	: NRS. 7000
International Participants	: \$ 150

Resource Persons:

National and International experts on socio economic rights and good governance facilitate the program. Experts and advocates working for the vulnerable groups from rights and rule of law-based approach are invited for the program.

Logistic Arrangement:

Expenditure on accommodation and food for participants during the program period is borne by the organizer. The organizer makes arrangements for the field research, meetings and other visits that fall under purview of the program. No extra cost is levied from participants.

The organizer bears travel expenditure of the expert and disburse the moderate remuneration for his/her service. It arranges local transportation, accommodation and food for them accordingly.

Participants shall bear their travel expenditure by themselves. Organizer will not be responsible to pay their personal bills and usages.

Course Certification:

Participants are certified for participating in the residential school at the end of the program. Selected students from final evaluation of the program are granted 'Diploma Certificate'.

Methodology:

- Preliminary Orientation
- Field Research
- Country Presentation by Students and Comments from Professors
- Workshop Discussion and Presentation of Findings
- Plenary
- Expert's Presentation/ Brainstorming
- Interaction and Discussion
- Group Exercise
- Preparation of Report/ Charter
- Moot Court Competition
- Examination and Evaluation
- Elocution

Available Facilities:

Residential school serves with library facilities with books and reference materials on the related issues. It also provides an online internet facility for the participants. First Aid is always at participants' disposal.

1st

Winter Residential School on Economic and Social Rights, and Good Governance - 2004-2005

Date : 7 Jan - 11 January 2005

Venue : Nagarkot, Nepal

Program Overview

The 1st Residential School provided a national forum to the students of KSL to interact on the manifold issues of economic and social rights and good governance amidst renowned experts of the country. The program was scheduled for five working days starting from 7th of January 2005. Selection of participants and preliminary orientation was held in the end of December 2004. The program aimed at educating students about the interrelationship of economic and social rights with good governance which forms the foundation of democracy and welfare state. Theoretical aspects of the issues were discussed followed by the interactions, group discussions and presentations.

The following areas were covered :

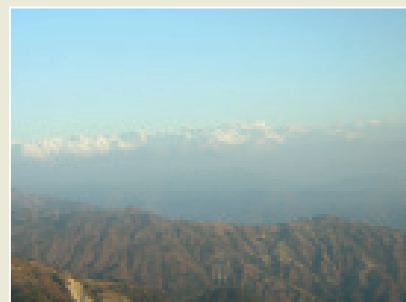
- Concept of Universality of "Human Rights".
- Position of Economic and Social Rights: Interrelationship of "Good Governance and Economic and Social Rights"
- Devolution of Powers and Concept of Sovereignty of People as an Indispensable Basis for Enjoyment of Economic and Social Rights by People'
- Extension of the "Concept of Rule of Law" and its implication in Ensuring "Good Governance and Enjoyment of Economic and Social Rights"
- Globalization & Privatization, and Marginalization of Peoples of Least Developed Countries.



At the end, participants were encouraged to develop a *Charter of Fundamental Rights of People of Himalayan Kingdom of Nepal and Structure of the Government and Its Mechanisms*. Not only that Participants also expressed their commitment to continue the initiatives on these issues as a part of their special project "Activism through Academic Pursuit." Civic education in grassroots community, research on social responsiveness of the media in Nepal are few other efforts made as part of this project.

Certification and Award

Certificate of participation was distributed to all participants on the final day of the Residential School. Award entitled *Nation's Future Human Rights Lawyer* was given to Ms. Samikshya



Baskota for her best performance in the program.

Participants

All together there were 30 participants and all of them were from Nepal. Seven participants were from LLM program where as remaining were from LLB program.

Out put

The participants developed a new Charter of Fundamental Rights of the Kingdom Of Himalaya .

2nd

2nd Winter Residential School on Economic and Social Rights, and Good Governance - 2005

Date : 18 - 24 October, 2005

Venue : Nagarkot, Nepal

Participating Countries: India, Nepal, Bhutan

Program Overview

2nd Residential school was organized jointly by KSL and SALS Fourm. The program developed seven days learning course schedule starting from 18th October 2005. SALS Forum developed the curriculum for the program and identified participants and resource persons. This year marked the beginning for regional participation from three countries viz. India, Nepal and Bhutan.

The following areas were covered :

- Empirical Study on the Situation of Socio-Economic Rights in Rural Villages
- Position of Economic and Social Rights: Interrelationship of "Good Governance and Economic and Social Rights" of the research to the participants
- Concept of Universality of "Human Rights".
- Devolution of Powers and Concept of Sovereignty of People as an Indispensable Basis for Enjoyment of Economic and Social Rights by People'
- "Concept of Rule of Law" and Its Implication in Ensuring "Good Governance for the Enjoyment of Economic and Social Rights"
- Impact of Globalization and Privatization in Economic and Social Rights of People in Developing Countries

The program adopted clinical methods of learning giving ample opportunity of participation. Team work, presentation and discussion were the prime mode of learning through out the program. Participants also conducted field research in different villages near Nagarkot VDC. Participants developed a



Charter of the Fundamental Rights of Himalayan Kingdom as to recognize the enforceability of economic, social and cultural rights which is the fundamental rights of the citizen in the Constitution of the country and also the democratic framework of governance.

Certification and Award

Certificate of participation was distributed to each participant on the last day of the Residential School.



Ms. Antara Singh and Mr. Barun Ghimire from LL.B first year bagged award of "Nation's Future Human Rights Lawyer".

Participants

There were 31 participants in total, among them 2 were from Bhutan, 2 from India and 27 from Nepal.

Notable Output

- Charter of the Himalayan Kingdom of Nepal, Structure of Government and its Mechanism including Economic Development Package



3rd

Winter Residential School on Economic, Social and Development Rights, and Good Governance - 2006

Date : 28 Dec. - 12 January, 2006

Venue : Nagarkot, Nepal

Participating Countries: India, Bangladesh, Bhutan, Nepal, Pakistan, China and Thailand

Program Overview

3rd Year Residential School was unique and significant in multiple aspects. From this year the School was able to gain the status of international program with increasing number of participating countries and wide-ranging curriculum. Curriculum was developed considering the credit hours and hence the program was acknowledged as *Short Term Diploma Course*. Joint effort of SALS Forum and KSL promoted the liaison between different law schools in Asia and abroad which contributed in increasing number of participants from different corner of the world. National and international experts and resource persons were also identified and invited to facilitate the sessions.

With the focused discussion on economic social and development rights of marginalized and disenfranchised community, the program was successful in understanding and critically analyzing the deepening factors and specific issues of socio economic and development rights of those groups and situation of good governance of the participating countries. Identifying the specific problems and SWOT of the respective country, the program explored solution at national as well as regional level.

Additionally, the program was divided into different sessions apart from lectures and presentations:

The program was also significant in forming the ESDR Alumnus.

Field research was conducted in different places of Nagarkot VDC to explore the situation of good governance and the problems being faced by rural, and marginalized communities.

Participants went to the 'Youth Forum Program', of the Nepal Television Metro Channel to voice their



opinions on the topic 'Opportunity for the Youths in the Promotion of Socio-Economic Rights and Good Governance'.

Certification and Award

Finally, the entire program was concluded with closing ceremonies and awards distribution. Mr. Rataphum Busumlee, participant from Thailand bagged the 'Academic Excellence Award' while Ms. Zhu Li, participant from China, received the 'Fellowship Award' and Mr. Abishek Gazmere from KSL bagged "Best performance Trophy" for the regional Elocution competition. The distribution of participation certificates and token of memoirs was also awarded to all the participants. 21 participants had been successful in acquiring 'Diploma' certificates in the program.

ESDR Alumnus

The Alumnus was formed taking the responsibility to assist to organize the residential programs for the following years.

Participants for the Program

There were 38 national and international participants in the program. Among them 4 were from Bangladesh, 2 participants from Bhutan, 1 from China, 5 participants from India, 1 from Thailand, 1 from Pakistan and 24 participants from Nepal.



Output:

- ESDR alumnus was formed taking the responsibility to assist to organize the residential programs for the following years.
- Program was developed as the short term Diploma Course.

4th

Winter Residential School on Economic, Social and Development Rights, and Good Governance - 2007

Date : 22 Sept. - 5 Oct. 2007

Venue : KSL & Telkot, Nepal

Participating Countries: India, Bangladesh, Nepal, Bhutan, Cambodia, China and Malawi

Program Overview

4th Residential School followed the modality of third Residential School. The program was conducted with the theme of economic social and development rights of women, marginalized and endangered community and good governance. The year was able to expand the dimension of the program with participants from African continent. The platform served to be the significant international forum to share the experience of many countries and learn best practices. The forum was also significant to promote discussion on exclusion of disenfranchised communities and its resultant impact on democracy. Discussion was particularly focused on the need of addressing the problem of socio-economic exclusion of vast majority of population in the developing countries, which collectively constitutes the disenfranchised condition.

Field research was conducted in different places of Nagarkot VDC to explore the situation of good governance and the problems being faced by women and marginalized communities.

Participants visited National Judicial Academy and National Police Academy to learn the activities and initiatives of these institutions in ensuring socio economic justice of the people.

Certification and Award

The entire program was concluded with closing



ceremony and award distribution. Ms. Nishika Sharma from KSL bagged the 'Academic Excellence Award', Mr. King Norman Rudi, participant from Malawi, received the 'Fellowship Award' and Ms. Swechya Ghimire from KSL bagged 'Best Performance Trophy' for the International Elocution Competition. The participation certificates, and token of memoirs was also distributed to all the participants. 21 participants had been successful in acquiring 'Diploma' certificates in the program.

Participants for the Program:

There were 45 national and international participants



in the program. Among them 4 were from Bangladesh, 2 participants from Bhutan, 1 from Cambodia, 1 from China, 4 participants from India, 2 from Malawi and 31 participants from Nepal.

Output:

- Program was concluded with field research, roundtable discussion, and interaction with ambassadors.
- The platform served to be the significant international forum to share the experience of many countries regarding socio economic conditions.



5th

Winter Residential School on Economic, Social & Development Rights, and Good Governance - 2008

Date : 16 October - 7 November, 2008

Venue : Telkot, Bhaktapur, Nepal

Participating Countries: India, Nepal, Thailand, Bangladesh, China, Sri Lanka

Introduction

Kathmandu School of Law (KSL) successfully implemented the 5th 'International Residential Course on Economic, Social and Development Rights, and Good Governance' from 16 October to 7 November, 2008 in cooperation with South Asian Law Schools Forum for Human Rights (SALS Forum) and co-funding by Danish Institute for Human Rights (DIHR). The primary goal of the Course was to provide opportunities for law faculties, students and rights advocates to address the issues of inter-relationship between economic, social and development rights and good governance with special focus on constitution making in developing countries.

A group of 50 law teachers, students and rights advocates from Bangladesh, China, India, Nepal, Sri Lanka, Sweden/Morocco and Thailand participated in the Course. Professors from Bangladesh, China, India, Japan and Nepal conducted the Course as residential resource persons. Professors and experts from Australia and experts on good governance working in different development agencies in Nepal also provided classes as resource persons.



Achievements

A regional forum to promote study on Economic, Social and Development Rights and Good Governance has been established. It has been catalytic to bring a number of law professors specializing on good governance and rule of law perspectives and experts and advocates working for the vulnerable groups from good governance

and rule of law-based approach. The forum was proved crucial to gather a number of experts of the region in this area.

A regional network of law faculties, experts, students and rights advocates has been constituted to address the following objectives:

- Building awareness about the economic and social justice to vulnerable groups as a

milestone for sustaining democracy.

- Developing a network for continuous communication and collaboration on issues of good governance and rule of law by exchanging information and experiences in respective countries.
- Creating a pool of experts on the issues of economic, social and development rights and good governance.





- Generating funds for sustainability of the course in future.
- Launching publication on the given areas of issues.
- Providing a mechanism to select resource persons and participants for the course.

A compendium on Economic Social and Development Rights and Good Governance has been developed which includes overview of economic, social and development rights, and good governance and information about the course objectives and proceedings. This compendium is expected to provide resource materials for understanding of economic, social and development rights and good governance. This will also provide resource materials for the course in future.

This platform has enhanced the capacity of KSL as a center for in-depth study and research on issues of economic, social and development rights as well as good governance.

Finally, the platform has provided a rich input to the



process of transformation of the Nepalese society. The problems faced by people in relation to the economic and social justice as well as good governance and the interventions designed by the Course to address such problems will provide a rich insights for the Constituent Assembly while making the new constitution in Nepal.

Participants for the Program

There were 46 national and international participants in the program. Among them 3 were from Bangladesh, 1 participants from Sri Lanka , 2 from China, 4 participants from India, 3 from Thailand , 1 from Pakistan and 32 participants from Nepal.



6th

International Residential School on Economic, Social and Development Rights, and Good Governance with Special Reference to Emerging Issues of Human Rights – 2010

Date : 21st October to 14th November 2010

Venue : Telkot, Bhaktapur, Nepal

Participating Countries: Nepal, India, China, Bangladesh

Organized by: Kathmandu School of Law (KSL) In Technical Cooperation with South Asian Institute of Legal Studies (SAILS)

In Association With:- CeLRRd, - DIHR, - DanidaHUGOU

Introduction

Kathmandu School of Law (KSL) successfully implemented the 6th 'International Residential Course on Economic, Social and Development Rights, and Good Governance with especial reference to emerging issues of human rights' from 21st October to 14th November, 2010 in technical cooperation with South Asian Law Schools Forum for Human Rights (SALS Forum) and in association with CeLRRD, Danish Institute for Human Rights (DIHR) and DanidaHUGOU.

The primary goal of the Course was to provide opportunities for law faculties, students and rights advocates to address the issues of inter-relationship between economic, social and development rights and good governance with special focus to emerging issues of human rights.

Inauguration program

The inaugural session of the 6th International Residential School on Economic Social and Development Rights and Good Governance with special reference to Emerging Issues was held on 21st October at the Conference Hall of Kathmandu School of Law.

The residential school was inaugurated by Chief Guest Mr. Gauri Pradhan, Member of National Human Rights Commission (NHRC)–Nepal, while the Chairperson of the inaugural was Professor Madhav Pd. Acharya, Professor In-Charge of KSL, Prof. Dr. Yubaraj Sangroula, Executive Director, KSL; Professor Zakir Hossain, Dean, Faculty of Law, Chittagong University, Bangladesh and Member of Bangladesh Judicial Service Commission were present in the program.

Themes covered

- Economic and Social Rights: Concept and Evolution (Includes concept of social and economic well being in ancient traditions)
- Dichotomy between Civil and Political Rights and ESDR and State Obligations: Myths and Realities



- Cultural Relativism: Myth and Reality
- Human Rights and Development
- Situation and Challenges associated with Economic Social Rights
- Challenges and Prospects of Economic and Social Rights
- Nexus of Development, Democracy and Social Justice: Developing Countries' Situation- Where are we failing?
- Linkage of Human Rights Good Governance and Democracy
- Economy, Security and Human Rights
- Enforcement Situation and mechanisms of Economic and Social Rights
- Linkage of Economic and Social Rights and Development
- WTO & ILO's Roles and Responsibilities for the promotion of ESDR

- Concept of Development and Right
- Democracy, Vulnerable Groups and ESDR
- Right to Self Determination: Meaning, Concept, Evolution and Scope in Context of CERD with reference to UN Standards & ICJ Jurisprudence
- ESDR, Gender and linkage between good governance and socio economic and development rights (Roles and Responsibilities of INGOs and NGOs)

Workshops and Symposium

- Workshop I: Identification of the common challenges and prospects and collaboration to address the problems
- Workshop II: Inclusiveness and Good Governance to promote Economic, Social and Development Rights
- WORKSHOP III: Innovative Writing on the Right to Self Determination and Indigenous Communities
- SYMPOSIUM I & II : Problems and Security Challenges in Post Conflict Societies in the Context of Good Governance and Protection of Human in Participating Countries

Field Research

Field research was conducted in Melamchi on the five thematic issues relating to socio economic rights. Researches were done by students on health, community forest, human trafficking, education and water supply project of Melamchi.

The participants in each thematic issue came up





PARTICIPANTS

BANGLADESH

1. MD. Saimum Reza Talukder
2. Sushmita Ahmed
3. Nabila Farhin
4. Badsha Mia
5. Mr.Rezaur Rahmen Lemin

CHINA

6. Huang Xianjing

INDIA

7. Jesmita Gautam

NEPAL

8. Arati Shrestha (B)
9. Lalita Shrestha
10. Anita Jadhari
11. Sarala Shrestha
12. Radhika Suwal
13. Prabindra Joshi
14. Kriti Singh Bhandari
15. Sunil Suwal
16. Ram Chandra Gautam
17. Rita Sherpa
18. Maunata Dhaubanjari
19. Prakash Dhaubanjari
20. Nishani Singh Thakuri
21. Dhanga Rupa Dahal
22. Shradha Atreya
23. Ankita K.C.
24. Ranjeeta K.C.
25. Kamana Neupane
26. Shruti Gautam
27. Gyanu Gautam
28. Binita Pandey
29. Nirab Gyawali
30. Isha Subedi
31. Jyoti Singh Bhandari
32. Ranjeeta Silwal
33. Jyoti Mainali

with the following ideas;

- Women lack nutritious food during pregnancy. State need to ensure health facilities along with regular check up.
- The enrollment of girls in school is more than boys.
- The facilities like library, books are well managed in the school. The students were found to use the resources in library donated by KSL.
- The Melamchi Drinking Water supply project has satisfactorily addressed the needs of the local inhabitants. Employment opportunity, construction of schools, health post is some of the outcomes of the project.
- Community forestry has positively impacted in the life of the people. People in the locality can have access to firewood, medicinal plants from the community forest. They don't need to spend much time walking for firewood and other products from forest.

Certificates and Awards

Finally, the entire program was concluded with closing ceremony and award distribution. Ms. Huang Xianjing participant from China bagged the Academic Excellence Award and First prize of Elocution was shared by Ms. Huang Xianjing and Ms. Ankita K.C. The distribution participants certificates and token of memories were awarded to all 33 participants and 18 participants were able

to receive diploma certificate in the program.

Achievements

The program was successful to promote interactive dialogue among academics, which is believed to contribute to bring about changes in the stereotypical notion of justice in Nepal. These interactions contributed to generate sensitivity towards needs and issue of economic and social justice for sustainability of democracy in South Asian countries. The program has tremendously helped the Nepalese lawyers and academics to deeply think about the need of restructuring of the state's policies and institutions from the perspective of inclusion. In addition, the dialogue has significantly helped to:

- Deepen the understanding of rule of law, good governance and democracy, with focus on accountability of government system;
- learn from success and failure stories of other countries, and thereby contribute to discussion on possible approaches, and contents to be followed while guaranteeing economic social and development rights;
- Enhance the quality of empirical research of students and academics on socio-economic transformation and inclusive democracy.

Giving opportunity for scholars and professors to deepen the understanding of interrelationship and interdependence of economic and social rights and democracy is expected to create far-reaching impact

in the days to come. This understanding has helped to relate legal education to the community needs, and development issues. Thus this program has genuinely interlinked the legal education to the service of the disenfranchised community particularly in the issue of social security. Most importantly, this program has contributed to link human rights issues with governance structure, accountability of political system and social security.



7th

7th International Residential School on Economic, Social and Development Rights, and Good Governance with Special Reference to Law and Development – 2011

Date : 4 – 24 December 2011.

Venue : Telkot, Bode, Bhaktapur, Nepal

Background

Freedom and development, for overall human security, are not only inseparably aligned but mutually respectful, reinforcing and interdependent. In his important work, *Development and Freedom*, Amartya Sen has lucidly presented the linkages between development and freedom for rescue of people from a state of poverty and deprivation. Want or failure of one will automatically affect the posture of other. The truth of the theory in the present world order has empirically been established. No democracy can thrive in absence of economic and social development and vice versa. No democracy can be consolidated and institutionalized in developing countries in absence of economic and social transformation of the vast majority of the poor population. As early as 1980s, Paul Johnson, in *Modern Times*, had argued on how the lack of freedom had impoverished many countries subjecting the lives of millions in a state of deprivation. One can point to situation after situation in different parts of the world where the lack of freedom saps the creative capacity of the people and impoverishes them. He argued emphatically that where people were free, they were inspired to create and produce. They could be more efficient as they drew upon individual and corporate enterprises and new ways of accomplishing things. Minus freedom, he opined, the suppression and corruption flourishes and development works can hardly succeed. Minus development on the other hand will sap the institutional as well as structural framework of democracy ensuing violation of human freedom. South Asia is the pertinent example of the assertion.

Any act of ensuring and promoting freedom, in other words, human rights, ostensibly refers to an act of attaining a change or shift in existing condition of life which exists suppressed or oppressed. Development in this sense has an unavoidable interface with human rights and as



such constitutes an instrument of promoting the equity-based progress to replace the 'state of regressive status quo', which implies a condition of socio-economic and political life in a society or nation conventionally imposed for continuity of looming deprivation and subordination of people. The term development, as an interface of human rights, refers to a 'state of strategically planned transformation of lives of people from whatsoever existing conditions to a better state of human security'. Emotionally, it is a condition in which people, individually or collectively as per the given context, have been able to attain a suitable or progressive position in order to render them capable of addressing the looming socio-economic and political disadvantages. Economically, the term development refers to state of 'adequacy of resources and opportunities to enhance creativity and productivity in life'. Politically, it connotes to a state in which people are able to participate in decision making process and meaningfully hold representation in the State institutions. No human right in its any form can be enjoyed or exercised in a state of 'regressive status quo'.

The governments of the developing countries are less bothered to the coherent and integrated protection and promotion of all liberal and development rights of people and address the long standing problem of 'regressive status quo'. South Asia is a particular example. The South Asian governments, by emphasis on 'so-called national security' based on a perceived threat of insecurity from others, spend unbelievably huge percentage of the Gross Domestic Product (GDP) for security measures. Collectively, the South Asian nations spend over 40 billion USD each year in defense outfit and development of sophisticated weapons. By contrast, the spending on social service sector is less than one percent (0.7 %). The bottom-line poor population in the region has access only to 5 percent of the GDP whereas the 10 percent upper strata people consume 50 percent of the GDP. This is a state of utter discrimination in distribution of resources. The poverty is thus not an outcome of fate or indolence of the poor and deprived people but an unjust system of distribution of resources. The poverty is thus an outcome of the wrong and discriminatory policies of the Governments. South Asia represents 22

percent in the global population but is holding up 43 percent of the poor people of the world. The democracy is instable and power-centric political culture has unleashed the way for 'incessantly increasing criminalization of politics'. Hence, the protection of freedoms without addressing the looming state of regressive status quo is unthinkable.

Over the last some years, South Asia has achieved tremendous improvement in macro-economy growth rate. However, the growth rate is in no way equitable to people. Rather it has unleashed an income inequality to an extremely heightened rate accompanied by escalation of the price rise on essential commodities. This has made the lives of poor people worse. Today, 559 people in South Asia survive with onetime nasty meal. 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 contributed to the increase of poverty among in the rural areas. Moreover, the poverty has severely hit the female population and it has negatively affected the education, employment and other services in rural areas. The intensification of rural poverty has thus posed an indispensable interface with increasing problem of violence and insurgency. 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 adults—the highest absolute number in the world. The health indicators show a scary situation. 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. Most shockingly, the number of malnourished people in the last ten years has

increased from 290 million to 299 million.

The economic growth is occurred mostly in the service sector in the urban areas. 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, however, has declined from 28 to plus 19 percent in the same period. The contribution of industry in the GDP has remained stagnated at around 27 percent. Given the fact that industry is considered to be the backbone of any flourishing economy, it seems that the growth of economy in South Asia is, with deterioration of agriculture and industrial sectors, mainly confined to service sector, and it is essentially pro-elitist in nature, thus posing a serious threat to marginalization of extremely large part of the population. The so-called economic growth has achieved nothing but the rise of middle class into rich class.

The corruption in all institutions of State is phenomenal in South Asia. One of the reasons for this is overwhelming domination of the Government in all functions of the State. The South Asian Governments are directly engaged in activities of development expenditures. The decentralization of development authority is ostensibly discarded. This practice constitutes a major cause of notoriously high level of corruption in State institutions. This skewed governance system has stood on inefficiency





and corruption is a cause of many severe consequences. The tax collection, for instance, is an example; it is so meager that hardly one percent of the population pays income tax. South Asia collects around 10 percent of GDP in taxes, compared to the average 15-20 (GDP) percent tax collection in developing countries. Yet, a bigger irony is that most of these taxes fall far more heavily on the poor and lower middle classes. Nearly seven percent of the tax in the region is collected through levying indirect taxes. Most pathetically, even the low levels of revenue that governments collect largely fail to materialize into pro-poor expenditure. Finally, the ability of South Asian governments to deliver the most basic goods is further weakened by endemic corruption.

The international politics of human rights has also to some extent contributed to the prolongation of the state of acute poverty in the world. The practice of dividing human rights between civil and political and economic and social rights ostensibly with less emphasis to the later has significantly contributed to politicize human rights to an acute disadvantage of the poor population of the world. The deceptive theory of the divisibility of human rights, with less importance to economic, social and cultural rights, has given birth to an erroneous human rights jurisprudence. This division advertently underscores derogation to the human dignity of the poor people of the world. The theory of divisibility of human rights sponsored by the developed countries is largely responsible to prolong the 'state of regressive status quo in developing countries'. This theory legitimizes the dehumanized condition of life of millions of poor people in the world and consequently results in instability of democracy. Dryness of attitude shown to economic, social and development rights by the international politics has perceptibly taken lives of countless of children, women and workers.

The unjust practice of giving less importance to economic and social rights has ostensibly exempted the governments of the developing countries from responsibility of securing with

priority the economic and social transformation of poor people's lives. The beneficiary of the right to development is, first and foremost, an individual. But the individual cannot simply wait until he/she has developed; the individual also has right to opportunities to develop. The responsibility to make such opportunities available to individuals belongs to States: States have the primary responsibility for the creation of national and international conditions favorable to the realization of rights to the development. On the international level, this means that 'developed States have the duty to take steps individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to the development. And on the national level, it means that 'States should undertake all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income'

The economic and social wellbeing of people is the major agenda of the development, as it is so pointed out by the UN *Declaration of the Rights on Development*. However, the right to economic and social wellbeing of people has historically become the victim of political division of the west and east, and the socialist and capitalist



countries. Some concerns were raised to give an utmost priority to development as a pre-condition of the peace and stability in the world during initial days of discussion to establish the United Nations, the San Francisco Conference in particular. It, however, failed to properly address the necessity of emphasizing the 'economic development and social security of all people'. Article 55 and 56 emerged to be the only Articles in the Charter to directly deal with the role of the UN as whole in economic and social development. The major reason behind this limited attention of the UN to the economic and social development of the people was that the founders of the United Nations at San Francisco conference were the most influential countries and most of them had developed economies already. The matter of economic development thus could not be an issue of priority for them. By contrast, they were guided by a misconception that what they were making the UN was 'an institution for collective security' but not an institution which could take responsibility of the economic development and social security of the poor people of the world. This notion of thinking implicitly rejected the 'international obligation' to address poverty in the world.

To put succinctly, the necessity of creation of stability and wellbeing on which peaceful and friendly relations of nations is rested, as outlined by Article 55 of the UN Charter, requires the international community to promote (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health and related problems; (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, and (d) the right to development by securing opportunities to enhance creative and productive engagement in economic, social and political affairs. While the State parties under Article 56 of the Charter have undertaken obligation to respect the provisions set forth in Article 55, in practice subsequent they presented a sharp opposite attitude to rights of people concerning economic and social progress. The looming poverty in the world today thus can be

somehow attributed to the wrong policies adopted by framers of the UN Charter.

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

The consequences of the politics of divisibility of human rights and generation theory have been costly; the governments of the developing countries due to the reasons never ever considered about their accountability to the devastating state of poverty and deprivation of people.

The issue of 'human security' is a major thrust of the modern human rights jurisprudence. It defines law as an instrument of protecting human dignity and welfare. Unlike the classical formalist jurisprudence, the human security and dignity-focused jurisprudence does not 'define law as a means of State to discipline people and make them behave as it desires'. By contrast, the modern human right-focused jurisprudence view law as an instrument of 'regulating behaviors or activities of State' so that it can be an ideal institution of serving human needs. The rule of law is the core theory of the pro-human rights jurisprudence. Law as an instrument of human security and welfare is people's instrument to put the State in its scope of work and oblige it to function according to law made by people with full participation. This notion of jurisprudence holds that 'no State can have its independent will or desire independent of the people' who have constituted it. Citizens are the sole 'constituents of State'; hence it should always work for the advantages of people. The term people's sovereignty thus does not imply an unregulated or undefined authority of State to rule people irrespective of their voices'. Sovereignty of people is an 'attribute' that keeps the people over State. Therefore, development is a right of people not the privilege of the State.

The "International Residential School on Economic, Social and Development Rights, and Good Governance" (ESDR) is an attempt of Kathmandu School of Law in collaboration with several counterparts in South Asia and surrounding countries to address the 'congenitally defective notion of human rights jurisprudence that bifurcates freedom and development, i.e. the division of civil and political and development rights in broader term. This school is a diploma course and has been significantly popular among students in Nepal and beyond. In the past seven

7TH ESDR ORGANIZING COMMITTEE



The Organizing Committee of the 7th International Residential School on Economic, Social and Development Rights with Special Reference to Emerging Issues

- | | |
|--------------------------|----------------------------|
| 1. Dhanga Rupa Dahal | 10. Ranjeeta K.C |
| 2. Ghana Shyam Silwal | 11. Rita Sherpa |
| 3. Kamana Neupane | 12. Shraddha Atreya |
| 4. Laxmi Bakhadyo | 13. Shruti Gautam |
| 5. Maunata Dhaubanjjar | 14. Shubhas Biswakarma |
| 6. Nishani Singh Thakuri | 15. Sukhi Lal Chaudhary |
| 7. Prakash Dhaubanjjar | 16. Sunil Suwal |
| 8. Prashant Pathak | 17. Tirtha Bahadur Baidhya |
| 9. Ramchandra Gautam | |

years, over 250 students from Nepal and other South Asian and surrounding countries have benefited from this school. This school will attempt to address:

- (a) issues of human rights in holistic perspective, that is to say that human rights are taken as an integrated instrument of promoting and protecting human dignity with special focus on poverty as a serious cause of violence and human rights violation;
- (b) issues of development as an interface of human rights and stable inclusive democracy;
- (c) issues of human rights based jurisprudence that focuses on 'people's sovereignty over natural resources and development choices' and 'autonomous local governance as an instruments of yielding fruits of democracy to disenfranchised and marginalized population';
- (d) issues of accountability of the governance system from perspective of accountability and prevention of corruption that dreadfully saps the prospect of democracy; and
- (e) issues of human security, which is a

primary of concern of every citizen and society.

The residential school is organized every year in the spring. It is a platform where academia, development workers, government policy makers and civil society members engage in teaching human rights and its linkages with development, governance system, rule of law and democracy in an empirical setting. The seventy percent participants in the school come from law schools and civil society from Nepal and rest other from other South Asian and surrounding countries. Every year, the school puts special focus on some emerging or crucial issue that has an intrinsic bearing with human rights and development. This year the school has 'taken up the issue of climate change and its impact on lives of marginalized communities. The core goal of the school in this year is to provide inputs to the Constituent Assembly concerning development as a right of people and foundation of sustainability of democracy. Since the school believes on indispensability of freedoms and development as its core belief, the outputs generated in this regard will be helpful to make the Constitution more meaningful.

Socio Economic Rights: A Brief Overview of The Existing Regime – Some Straws in the Wind

- Prof. R. Venkata Rao¹

Introduction

Since the inception of the human rights discourse at the global arena, second generation rights have been relegated to the background. The debate surrounding the lack of enforceability and justiciability of economic, social and cultural rights have posed a herculean challenge in implementing these rights in domestic settings. On the contrary, first generation or civil and political rights have seldom encountered such resistance and have been universally promoted in national scenario. Though numerous scholars have expressed the indivisibility and interdependence paradigm between first and second generation rights, in reality the latter are seldom regarded as legal rights. The effective realization of these has especially been problematic in developing countries.

The International Covenant of Economic, Social & Cultural Rights (hereinafter ESCR) remains the normative framework for second generations rights. A sprinkling of ESCR can also be sourced in other global human rights treaties like CEDAW, CEC, CERD, CRPD etc. The individual complaint mechanisms for the ICESCR is still in the pipeline. Regional human rights instruments impinging ESCR also exist-the European Social Charter, San Salvador Protocol etc.

Specific Obligations under ESCR Regime

The nature of obligation under ESCR varies. There are three integral elements of it. The Duty to Respect is tantamount to the negative obligation imposed on the State to refrain from acting in a manner that would either prevent access to rights or affect the enjoyment and exercise of the same. The Duty to Protect imposes upon the States the duty to prevent interference from third parties. And this requires a positive obligation on the part of the State establish regulatory frameworks that combat violations from third parties. The Duty to Fulfil obliges the State to take affirmative action to

ensure access and enjoyment of ESCR by all. This talks about an immediate achievement or a minimum standard to be progressively achieved.

Mapping Diverse Enforceability Approaches

Several countries world over including in the Asian region have endorsed innovative ways in promoting and protection economic, social and cultural rights. Despite the issues of progressive realisation as well as lack of resources for ESCR some countries in the last few decades have made substantial inroads in the arena of justiciability of ESCR.

The *Directive Principles Approach* in India is one such illustration for essaying plethora of jurisprudence on second generation rights. The Constitution of India embodies ESCR predominantly in Part IV and has with unique procedural initiatives like the *Public Interest*

Litigation adjudicated effectively on the enforceability of ESCR. It is in the recent past that the Parliament has also legislated extensively on numerous types of ESCR – *National Rural Employment Guarantee Act, Unorganised Workers Social Security Act, Right to Education Act* etc. The adjudication of ESCR by Indian court has also meant series of orders directing implementation of various schemes like the Mid-Day Meal Scheme to actualise ESCR.

The *Bill of Rights Approach* is unique to South Africa which though does not relegate ESCR but talks about availability of fund for them to materialise. The Grootboom case was instrumental in two arenas-identifying the minimum normative core content of ESCR as well as the criterion of progressive obligation. The Court endorsed these two parameters as being fundamental in assessing the State's compliance and willingness to implement ESCR. The Courts have also repeatedly emphasised on sustaining



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² Goal 1 : Eradicate Extreme Poverty & Hunger, Goal 2 : Achieve Universal Primary Education, Goal 3: Promote Gender Equality 7 Empowerment of Women, Goal 4: Reduce Child Mortality, Goal 5: Improve Maternal Health, Goal 6: Combat HIV/AIDS, malaria and other diseases, Goal 7: Ensure Environmental Sustainability, Goal 8 : Develop a Global Partnership for Development.



public pressure on the Government for rights to be more encompassing as well as to actually materialise especially in the realm of ESCR.

The European context adopts the *Indivisibility Approach*. Relying on the European Convention on Human Rights, the Courts have endorsed second generation rights by interpreting it in civil and political rights provisions of ECHR. Both procedural and substantive guarantees against States as well as third parties have been enumerated by the European Court on Human Rights evolutive interpretation of civil and political rights.

Profiling Asia : Complexities Galore for Socio Economic Rights

The Asian continent as a region is diverse and heterogeneous. Political instability dots many countries especially in the South Asian context. Military rules, dictatorial States, totalitarian governments are commonplace. The region has also over the decades experienced a legacy of bloodbath and severe human rights transgressions with armed conflicts and civil wars being pervasive in many nations. Political instability is pervasive. Economic development has set in but in an in-egalitarian and lop-sided fashion. Poverty continues to be the predominant cause of human rights abuses in many countries

The Asian continent is also conspicuous for being the sole region bereft of a regional human rights mechanism unlike its European, Inter America, African and even Arab counterparts. Independence of institutions is

also problematic-especially the judiciary and this has impacted severely the facilitation of human rights. The glaring absence of human rights ombudsman to assist in effective and sustainable implementation of human rights has been yet another illustration of negligible or minimal commitment to human rights by the Governments. Lack of a vibrant civil society set up that engages critically with the Government on human rights concerns has further added to the exiting woes.

And lastly State controlled media with sweeping censorship laws in many nations has culminated in human rights being a 'non-issue' in several nations. The resistance to numerous human rights norms on grounds of cultural relativism especially in the domain of second generation rights is yet another impediment. Archaic cultural and traditional practices have been yet another reason to curtail rights of certain subaltern groups as well as that of women, children and minorities etc. Some pockets in the region like South Asia have also witnessed series of refugee producing nations like Sri Lanka, Afghanistan, Myanmar, Tibet, Nepal etc. and this has also challenged regional peace and security.

Globalization, economic liberalisation and development has also resulted in a sizeable population been internally displaced due to development projects. The outflow and inflow of migrant population is another commonality in the region. Furthermore issues of caste, religion, gender, disability etc. have resulted in marginalisation and social exclusion that have grave repercussions on access to rights. Empowerment has been a rhetoric and despite rapid urbanisations and development and hardships, sufferings and quest for survival

continues to haunt many Asian States. Issues of corruption, lack of accountability, skewed public distribution system etc. are a few more factors responsible for ineffective realisation of ESCR.

MDGs : Role of Asia

The *Millennium Declaration* was a product of the *United Nations Millennium Summit in 2000* wherein world leaders concurred on the greater need to promote human rights and justice globally. The Declaration chalked out 8 time bound *Millennium Development Goals*² to be achievable by 2015 by all countries in the world. All the 8 goals have a direct bearing on diverse economic and social rights- health, education, food, maternal and child health, environment. The MDGs were also unique for the North-South collaboration and partnership it envisaged to accomplish these goals.

The Asian region is centrifugal to the world's vision of access to these enumerated 8 basic and core rights. For the entrenchment of a human rights culture domestically as well as globally the role played by the Asian region in addressing the proposed 8 MDGs is extremely vital. The successes and failures of the Asian States vis-à-vis the MDGs would largely determine the success of this endeavour at the global front. However in most South Asian States these have remained mere 'aspirational precepts'. Mainstreaming of economic, social and cultural rights is vital for the holistic development and progress of a given nation. There is a dire need to re-invigorate the commitments from States for the actual, effective and sustainable realisation of these rights in contemporary settings.

Perspectives Reflecting Problems of Chronic Human Rights Violations

- Prof. Dr. Yubaraj Sangroula

Asia, a continent of wider cultural diversity, wisdom and common heritage and home of many civilizations and ancient traditions, is a hope and despair both for people. The despair looms large because 'the majority of 800 million people in the world that are forced to live in extreme poverty- the hunger, scarcity, low human productivity and denial of development opportunities- are Asians. Nearly one in three Asians is poor, and two third of these poor are women. The poverty constitutes a major cause for early death, diseases, exploitation and violence in Asia. As early in 1940s, Mahatma Gandhi, the main architect of the Indian independence or British Quit movement', reflecting on 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". Poverty, as a source of violence, is both the cause and consequence of human rights violation in Asia. Yet, poverty as a consequence presents crueler scenario of inhumane state of life.

The cruelty of poverty in human life starts since pre-natal stage. The recent discoveries of medical researchers have abundantly shown that the 'effect of poverty of mother' is devastating to the health of the fetus who has not yet seen the world. The kind and quantity of nutrition the pre-born child has received in the womb; the pollutants, drugs and infections the fetus has exposed to during the gestation; the mothers' health, stress level and state of mind which she was pregnant with the fetus—all these factors do shape the future of fetus as a baby and a child and continue to affect him/her life. The pioneers of the gestation research

assert that the nine months of pre-born state constitutes the most consequential period of human lives, permanently influencing the wiring of the brain and the functioning of organs such as the heart, liver and pancreas. The conditions the fetus encounters in uterus shape his/her susceptibility to diseases, his/her appetite and metabolism, his/her intelligence and temperament. The health researchers of pre-natal conditions have brought to our notice a series of facts that suggest that the origin of cancer, cardiovascular disease, allergies, asthma, hypertension, diabetes, obesity, mental illness are consequences of adverse state of life of mother of the fetus. The negative effect of poverty in lives of people is thus enduring. The poverty forces a person to be born with diseases or physical and mental deficiencies. Imagining that every one person in three in Asia is poor, the Asian nations, with the given state of acute poverty level, are responsible for violation of human rights since pre-natal condition. They force millions of children to come out in this world with poverty inherited defects. It implies that the violation of human rights is not only associated with the proper treatment in post-natal stage.

Issue of protection of human rights is thus intrinsically associated with the given conditions of life in a society. The adverse conditions result in deprivation of human rights, i.e. the human dignity. The majority of Asian societies suffer from acutely adverse conditions of life, both socially and economically. The political tyranny or conditions of bad rule, stricken by multi-faceted form of corruption and abuse of authority, are obviously responsible to aggravate the situation. The leaders of political parties, ministers and



bureaucrats in most Asian countries are busy in stealing or plundering the wealth. The extortion of public wealth and pillaging of the national assets is a chronic problem in most Asian nations, the South Asia being in the forefront.

The rule of law and accountability are thus indispensable important instruments of saving the lives of people. They cannot be viewed as only an instrument of 'the system of political governance of the state'; rather they are an instrument of 'protecting people from corruption and abuse of powers' by political leaders and bureaucrats. The rule of law and accountability are necessary for preventing and eradicating the '*state of regressive status quo*'.

No protection and promotion of 'human rights', including democracy and rule of law, is simply possible in a state of *regressive status quo* perpetuated by a condition of life in which the vast quantum of the population is forced to go bed hungry every day. The *regressive status quo* is so cruel that a child dies of poverty-related causes every three seconds, and the vast majority of the girl children are deprived of access to go to schools without anyone's accountability. Furthermore, the cruelty converges into a misery when the large section of this 'unfortunate population' ends up in marriage at childhood or, at least, at early age unable to conceive and hence becomes victims of 'death of premature pregnancy'. This is a naked reality of human rights situation of Asia, the South Asian region in particular which gives homes to a quarter of the world population.

Though economic development growth rate is constantly going up and somehow stable over the last few decades, and it has been generating a hope in change of life based on 'equity', the 'paradox' it contains is even more shocking. The following statistics give some glimpses of the present state of Asia:

- The state of living standard of rural people in Nepal has not yet exhibited any positive sign of improvement. According to the Government Statistics, 31 percent of people live in a condition of extreme poverty, i.e. 'with one dollar income per day'. It means that 'this percentage of people is not only unable to afford 'foods with required minimum nutrition' but is also forced to 'struggle to survive' in a condition most unhygienic and unhealthy condition. About 60 percent of rural people have no access to safe drinking water. A recent study conducted by Harvard University, on behalf of the World Bank, reveals a further shocking finding that 'the proportion of the people forced to live in extremity of poverty consists of around 65 percent of the total population'. Studies have invariably presented that 'the 10 percent elitist population of the society enjoys 47% of the gross national income whereas the bottom-line poor people have access only to 5% of it. The present economic growth (around 5 percent) and development efforts have thus been exclusively exploited or extorted by the elite



population, and thus it constitutes a primary cause for widening the gap between the poor and rich. The development efforts and success have thus played no role to bring about 'equity-based transformation' in the lives of vast majority of people. The role of the international development agencies cannot be separated from this general situation.

- Indian economy, over the last some years, has been able to maintain a consistent booming growth pattern over the last some years. In 2010, the growth rate has reportedly been 9.2 percent. The distribution of the benefit of this booming economic growth is, however, found not rational and equitable for many reasons, the widening gap between the rich and poor being the most key one. The province of Orissa, one the provinces of India situated on the eastern coast, for instance, records a miserable condition about socio-economic lives of people despite this unprecedented growth of economy. This state has a population of 36 millions, with a very high percentage of scheduled tribes and scheduled castes (communities that are accorded special status by the Constitution of India), approximately constituting the 40 percent of the total population of the province. Painfully enough, however, about 17 million people in this province is forced to live below the poverty line. The poverty line is reportedly 47.15 % in this state. The Human Development Report for Orissa (2004) outlines pervasive poverty, food insecurity, under-attainment in female literacy levels, and wider gender disparity in access to opportunity and benefits. Orissa alone is not an example in India. Many other states, the north eastern states in specific, have been crippled by similar situation.
- Bangladesh is facing the similar problem. The problem of poverty in rural Bangladesh is massive and cruel. As per the UN-ESCAP report, 48 percent children in Bangladesh are undernourished.
- In Afghanistan, one child in four dies before reaching age of five years.
- Shockingly enough, each year half a million people in the Asia Pacific region die of HIV/AIDS related causes.

- In Asia one quarter of a million women die as a result of pregnancy or childbirth each year, and in South Asia 63 percent of all child births are unregistered.

Obviously, who is entitled to enjoy benefits of the 'the development of the economy, urbanization, and science and technology' in Asia is apparent from the above mentioned facts. These few glimpses of the reality versus rights-based approach rhetoric indicate that the 'development is still a myth to the poor rural people of South Asia. Particularly, the population of women is worse affected. To say with heavy heart, the economic growth across Asia has contributed to widen the 'gap between the rich and poor people'. It is contributing to the intensity of vulnerability of the 'structural violence', which ultimately contributes to the 'systematic violation of human rights by State actors'.

The states of life of people in South Asia are living give glimpses of the pattern and typology of the violation of human rights:

- a. Food scarcity is acute forcing millions of people live without nutrition or survives in a state of acute malnutrition.
- b. Pregnant mothers due to food scarcity, stress and exposure to pollution are forced to give birth to babies that inherit mothers' deficiencies of nutrition and healthy life as diseases in them.
- c. Children who survive the age of five do have no opportunities to go to school and develop productivity.
- d. Poverty forms a main cause of discrimination in opportunities.
- e. Deprivation of opportunities pushes millions of poor to the worse consequence of *regressive status quo*.

Development, as a process of transformation of lives into safety and dignity of every human being, is thus an instrument protecting and promoting human rights. The linkage of the development and human rights is thus apparent. The South Asian situation of poverty today, therefore, needs to be intervened by human rights approaches if the development has to yield the fruits to millions of poor. The ancient traditional values in Asia are not less concerned with these types of facts. The longing for dignified life has been persistent in these values, and the same has been described as 'a key goal of the governance and human life'. The Vedic Philosophy, that has tremendous influence in the South Asian life style, advocates five freedoms against violence (*ahimsa*), freedom against exploitation (*aparigraha*), freedom against disease (*arogyata*), freedom against want (*asteya*) and freedom against early death (*amartwa*). These freedoms have been elaborately emphasized by the Buddhism as a goal of human life. The Confucianism also places high importance of the State's responsibility to accomplish these goals. Why Asia is then languishing as a most 'deplorable place' in the world in terms of failure to transform the lives of people? Underlying causes need to be deeply explored and analyzed empirically.

Shackles of *chhaupadi* system in Nepal

- Shubhas Bishwakarma

C*hhaupadi* system is a social tradition in the western part of Nepal for Hindu women, which prohibits a woman from participating in normal family activities during menstruation because they are considered impure. The women are kept out of the house and have to live in a shed. This lasts ten to eleven days when an adolescent girl has her first period and four to seven for every following one. Childbirth also results in a ten to eleven-day confinement.³

Literally *Chhau* means menstruation and *padi* means women. *Chhaupadi* system is a social ritual followed by people in some regions of Nepal. This ritual regards women as "impure" during their menstrual cycle; it is known to have initially originated centuries ago from a belief that gods and goddesses become angry if any woman stays in her home during that time. Following the ritual, women are made to live in sheds outside their homes called *Chhaupadi goths*. A menstruating woman cannot touch anyone; if anyone touches her, the person needs to be purified by taking a bath and drinking cow's urine. Specifically, she is not permitted to touch pregnant women or trees, because of the idea that the "fruit" each are bearing will die or will be malformed. Menstruating women are not permitted to participate in religious ceremonies, nutritious food is forbidden, and warm clothing is not allowed. Yet, they are still expected to participate in hard labor, carrying out the daily chores that they would normally do, such as working in the fields, fetching firewood, washing clothes, and so on.⁴

During the menstruation period, generally women stay in the shed for four or five days. At the end of the ritual, they take a bath; wash their clothes and bedding and return home. There are two kinds of "*Chhau*" (menstruation): minor *Chhau* and major *Chhau*. During minor *Chhau*, the stay lasts four to five days. During major *Chhau*, which occurs after childbirth and during menarche, women are obliged to stay in the *goth* for ten to eleven days.⁵

In addition to these, women in western part of Nepal who are practicing the system lead several anomalies in society and raise the problem in reproductive health. This superstitious belief of society puts women in dirt and isolation bearing the risk of various contracting diseases, danger of rape, acute health problems, physical and mental weaknesses and illness and subsequently the danger of attack of dangerous wild animals and



sometimes snake bites.⁶

This sort of inhuman and barbaric practice forbids women and girl from enjoying their rights and individual liberty. In order to reform this practice, efforts have been made through Public interest litigation on initiative of Dalit NGO Federation (DNF) in 061 BS. The Supreme Court of Nepal ordered the government to take necessary steps to reform the system on the particular region of Nepal on the base of national laws and international instruments of human rights in part of women. In accordance with that the government of Nepal has made directive on *Chhaupadi* system in 064 BS. The directive orders of the Supreme Court have brought a lot of change initiatives regarding the elimination of discriminatory traditions that are deeply rooted in the society and being practiced in the name of cultural, customary or religious practices. The Court has also issued a number of implementation guidelines to be implemented by the Government. The SC also issued directive order to the Ministry of Health for the formation of a Committee so as to conduct an in-depth study on the impact of this practice on women's health. The MWCSW was also ordered to develop the guidelines against it in the line of elimination of violence and discrimination against women. More importantly, the Court observed the importance of NGOs in carrying out awareness campaigns against this kind of discriminatory, inhumane and degrading traditional and customary practices.

Further, the Supreme Court's directive order is being implemented by the Government with a number of implementation measures. The cabinet decision has already declared *Chaupadi* as the worst form of malpractices. Similarly, the MWCSW with a three year pilot project (supported by Save the Children Norway), is conducting various programs followed by three strategies:

- generating awareness through different type of media (such as songs in the FM, leaflet, posters, documentary);
- Health checkups and safety measures including sanitation under which separate toilet with sanitary napkins, infirmary, are made available.
- Vigilance cell formation comprising community old women and male members to put pressure against such malpractices.

These programs have some positive outputs because some changes have been seen after these interventions. For instance, the mindset of people of far western, where *Chaupadi* is being practiced, has undergone a positive change. The confinement period during the menstrual cycle has been reduced and instead of cowsheds, women are allowed to shelter in places comparatively hygienic to cowsheds. Additionally, the Ministry of Health and Population has already established a committee and has carried out a depth research on the adverse impact on women's health due to these kinds of practices.⁷

³ www.wikipedia.org, accessed on 26 October 2010

⁴ <http://blog.nyayahealth.org/2010/03/26/chhaupadi/> accessed on 24

⁵ October 2010

⁶ *Ibid.*

⁶ Shackles of the "Chhaupadi" system on women by Bidhya Chapagain written on 2005-8-16, http://www.astitwa.com/story_main.php?cat_id=12&article_id=32 accessed on 26 October 2010.

⁷ Excerpts from CEDAW 4-5 Combined Periodic Reports, Nepal Government (2008) (A draft prepared Geeta Pathak, Associate Prof. Kathmandu School of Law)

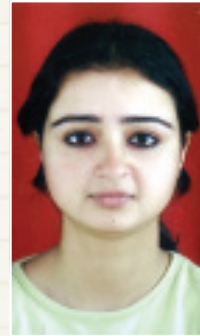
Reflection

4th Winter Residential School on Economic, Social and Development Rights and Good Governance was a turning point in my life as a law student. It was best platform I can ever have in my first year of LL.B. I was awarded a Trophy for best Performance in winning the Elocution Competition which was an achievement in itself. It boosted my confidence and always inspires to enhance my scope of improvement.

Representatives from seven countries of South Asia, Asia-Pacific and African Continent as participants, resource persons of different universities in residential school were an exposure in the international arena. Participants' country presentations, group presentations and research work gave an opportunity to interact and disseminate information about socio-economic situation of each country. It has participatory learning method done through knowledge sharing and knowledge gaining. From morning walk to the dinner table, cultural programs to performance evaluations, visit to the forensic institute to site seeing, in every place there was a teaching and learning process. Informative and interactive classes, presentations and discussion programs made every participant involved and helped each person grow as a student. We learnt maximum content in a limited period of time.

Kathmandu School of law as a legal institution has made great contribution to the legal system through this residential school where future lawyers are taught about socio-economic rights. Lawyers who are part of this residential school will definitely advocate in its support concerned places. The knowledge I have gained in this residential school has always supported me as a student of human rights and I am committed to working for the protection and promotion of economic social and development rights. This school as a guide and mentor has brought me to a position where I can now see a future as a human rights lawyer.

- Swechha Gimire



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