

**GLOBALIZATION AND AMERICAN HUMAN RIGHTS POLICY DURING CLINTON  
ADMINISTRATION TOWARDS CHINA, INDIA AND MYANMAR**

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**CERTIFICATE**

Certified that the dissertation entitled "GLOBALIZATION AND AMERICAN HUMAN RIGHTS POLICY DURING CLINTON ADMINISTRATION TOWARDS CHINA, INDIA AND MYANMAR" submitted by KAUSHIKI SANYAL, in partial fulfilment of MASTER OF PHILOSOPHY (M.Phil), has not been previously submitted for any other degree of this or any other university. This is her original work.

We recommend that this dissertation be placed before the examiners for evaluation.

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# CONTENTS

	<b>PAGE</b>
PREFACE	i – v
1. GLOBALIZATION AND CONTOURS OF AMERICAN HUMAN RIGHTS POLICY	1 – 18
2. CONTRADICTING AMERICAN HUMAN RIGHTS POLICY TOWARDS CHINA	19 – 40
3. AMERICAN INSENSITIVITY TOWARDS INDIA'S HUMAN RIGHTS ISSUES	41 – 72
4. AMERICAN INDIFFERENCE TO MYANMAR'S HUMAN RIGHTS PROBLEMS	73 – 89
5. CONCLUSIONS	90 – 107
APPENDIX I	108 – 112
BIBLIOGRAPHY	113 – 121

## PREFACE

Human rights as a concept, practice and, concern has always been associated with U.S.A, as the very foundation of that nation was laid on the principles of human rights and liberty. If President Roosevelt gave human rights prominence on the international stage during the 2<sup>nd</sup> World War, it was President Carter who placed the issue squarely on the American agenda in the late 1970s by linking human rights and foreign policy. But American foreign policy's central theme has been the protection of national interest, security and economic prosperity. Thus pragmatism has prevailed over principles and morality abandoned in the name of self-preservation. Nowhere it is more evident than during the Cold War era when the US supported military dictatorships, engineered coups and assassinations, and escalated the arms race in many Latin American countries, in the Middle East, Pakistan, Indo-China. Even within the country human rights violations is still rampant towards racial minorities and women. The end of Cold War generated broad optimism that human rights would take centre stage, not only in American foreign policy but in world politics as a whole. It was assumed that the global revolutions in communications and commerce would inevitably carry domestic political ideas and economic practices into even the most repressive and backward societies. President Clinton's foreign policy was thus dominated by human rights issues (economic and trade issues aside) during the 1992 campaign. But in the face of reality the Clinton administration failed to honour its commitment in this regard. Some of the failures include Bosnia, its decision to supply Pakistan with weapons, and de-linking Chinese human rights issue and trade because of economic compulsions.

The post Cold War dilemma in American foreign policy concerning human rights gets further accentuated by voices emanating from developing countries, particularly from Asia, that challenge American human rights initiatives as cultural imperialism. But the main

bone of contention is the Western attempt to link the practice of human rights with trade, arrogantly assuming the Western model of human rights to be universal, without taking into account the specific socio-cultural milieu of a country. This linkage is criticised severely because the underlying idea behind it is economic protectionism and draining of wealth from poorer nations. The entire debate concerning the 'social clause' is perceived as fraught with double standards. The dominant West's violations of human rights in the non-western world, coupled with its inability to uphold some of the fundamental rights of its own citizens has given rise to scepticism about the sincerity of the US towards human rights. The US is striving to harness the forces of globalization for its benefit by scrutinising 'rights repressive' regimes and taking punitive action, like sanctions, against them. But its approach is not even handed, as will be revealed from the case studies of China, India and Myanmar, leading to cynicism about its sincerity.

At the threshold of the new millennium, a new dimension has been added to the conventional development model ie. globalization. That it would have a crucial impact on the question of human rights is a foregone conclusion. The central theme of my research is to determine the kind of effect globalization is having on the issue of human rights in China, India and Myanmar. The U.S being the harbinger of the new globalizing force economically, politically and socially, it is imperative to understand and analyze the human rights being followed in the Clinton administration. A detailed study would be attempted to understand the nature of impact of globalization on human rights. For this to be possible, the views of the Asian scholars and their alternative theories has to be considered. The grassroots movements in the developing countries, spearheaded in part by globalization, is integral to the issue of human rights. Their goal is to evolve an alternative approach to development which is more holistic, transcends economism and addresses issues of material, spiritual and cultural well-being of the people. Finally, I would like to examine, keeping in mind the

realities of today, whether in the final analysis, a new approach to human rights can be evolved, which is acceptable to U.S.A as well as the developing countries.

But the relationship between human rights and globalization is fraught with problems. There are a number of areas in which globalization can be a threat to human rights in a variety of ways. The poorer countries lose out in terms of unequal economic power between rich countries and trans-national companies and themselves. In a more specific manner, the threat is in terms of impoverishment of the very poor who are often marginalised and made poorer as other parts of the economies of the developing countries are drawn into the global economy. It also leads to the destruction of traditional cultures among those who are drawn into the global economy and its practices. A certain 'homogenisation of cultures' is taking place in the face of a pervasive model of modern development.

But the cause of human rights is being forwarded by globalization from below which is represented in the form of a variety of trans-national social movements that have wide-ranging concerns grounded in a notion of human community that is itself based on unity in diversity. The concerns of these movements include human rights, the environment, women's issues, sustainable development, peace and justice, universal literacy and liberation from oppression. At the political level, globalization from below is reflected in the spread of these human rights movements and particularly through horizontal trans-national linkages that they are forming through Non-Governmental Organisations (NGOs) and other forums. The globalization of democracy refers to a creation of global perspective and values establishing a global civil society which allows for the diversities in cultures.

The case studies of the three developing countries that is going to be undertaken are China, India and Myanmar. The reason behind the choice of these countries lies in the diverse socio-political milieu. The different approaches adopted by the US to address the issues of human rights violations in these countries would be an enlightening exercise towards revealing the motives behind America's human rights rhetoric. The effect of globalization on the human rights situation in these countries and whether it is the panacea for all ills, as the US is advocating, would also be part of the study.

In my introductory chapter, **Globalization and the Contours of American Human Rights Policy**, I have traced the rise to prominence of human rights as an issue in American foreign policy. I have also attempted to understand the nature of the impact of globalization on human rights. For this to be possible, the views of the Asian scholars and their alternative theories is going to be considered. The second chapter, **Contradicting American Human Rights Policy Towards China**, I have attempted to study the American policy towards Chinese human rights violations during the Clinton administration. Though verbal criticism has been strong, it has not translated in much substantial actions as is evident from the de-linking of trade issues from human rights. The third chapter, **American Insensitivity Towards India's Human Rights Issues**, deals with the attitude of the US on issues like child labour, police brutalities and human rights violations in Punjab, Kashmir and North-Eastern states in the face of cross-border terrorism and insurgencies. An examination of motive behind the linking of trade with child labour has also been attempted in a small way. An attempt has been made in the third chapter, **American Indifference to Myanmar's Human Rights Problems**, to understand why America has pursued an ad-hoc, inconsistent and largely indifferent human rights policy towards Myanmar. Lastly, in **Conclusion**, I have strived to answer question like, what has been the effect of President Clinton's human rights policy on China, India and Myanmar in an era of globalization and whether a consensus can be

reached between American and developing countries' aspirations regarding human rights, in the light of new challenges of globalization.

I would like to express my gratitude to my supervisor, Prof. (Dr.) Christopher S. Raj for his guidance and encouragement without which I could never have completed my dissertation. I am grateful to all the faculty members of the American Studies Division for their inspiration and valuable inputs. I would like to express my heartfelt gratitude to my parents without whose unwavering support and guidance this dissertation would never have seen the light of day. Finally, I would also like to take this opportunity to thank all my friends who have always been ready to provide a helping hand whenever I needed it.

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**July 28, 2000.**

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## CHAPTER 1

### GLOBALIZATION AND THE CONTOURS OF AMERICAN HUMAN RIGHTS POLICY : A PERSPECTIVE

International human rights, while rooted in the founding documents of nation-states, are today a force that can undermine the exclusive authority of the state over its nationals and thereby contribute significantly in the transformation of the interstate system and international legal order. The impact of human rights as well as globalization, from the viewpoint of morality and reality, has been profound in contemporary times. Though the existence of human rights predates processes of globalization it has affected the cause of human rights very intensely. Before we get down to the nitty gritty of the subject of this research we need to delve into historical development of the term human rights and what impact has globalization had on it. The relevance of scrutinising the human rights policy of United States of America, both past and present, lies in the claim that the very foundation of the nation was laid on the principles of human rights and liberty. The U.S is also the dominant core nation under whose aegis the phenomenon of globalization is unfolding.

For a better understanding of the issues at hand, a broad definition of the two keywords, human rights and globalization is essential. Human rights are entitlements due to every man, woman and child because they are human. The Universal Declaration of Human Rights (UDHR), adopted and proclaimed on 10 December, 1948, by the U.N General Assembly, "proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations to the end that every individual and every organ of society, keeping the Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by

progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member states themselves and among the peoples of territories under their jurisdiction.”<sup>1</sup> The thirty articles include rights pertaining to the security of the person, including the right not to be deprived of life or liberty without due process of law; the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; and the right not to be held in slavery or servitude. The violation of these rights can never be justified, even by a state of national emergency. Human rights also include civil and political rights like the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association, the right to freedom of movement and so on. Economic, social and cultural rights share the stage with civil and political rights on an equal footing. They include basic survival rights to food, shelter, health care and social services, the right to work and the right to education.

With the adoption of the Declaration, the Commission on Human Rights, set up in 1946, by the UN tasted its first victory. The vote of the General Assembly, then composed of 56 member states, was 48 in favour, 8 abstaining (the socialist States, Saudi Arabia, and South Africa) and none against. The UDHR was proclaimed as “a common standard of achievement for all peoples and all nations”. On 9 December, the U.N General Assembly adopted the first multilateral human rights treaty, the Convention on the prevention and Punishment of the Crime of Genocide. In 1948, the hope of the CHR was that the UDHR, which was not really law but a statement of principles, would rapidly be codified into an international convention, with enforcement mechanisms to hold States accountable for violations. However, by the end of 1948, the international consensus required for this to take place had already evaporated with the onset of the

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<sup>1</sup> See Appendix I for Universal Declaration of Human Rights.

Cold War. Moreover, because the Western States, led by the U.S and the Socialist States differed radically about the importance of civil and political rights on one hand and economic, social and cultural rights on the other, three separate instruments emerged. They were, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and political Rights and the Optional Protocol to the latter Covenant, whereby any State that becomes party to the Protocol recognises the competence of the Human Rights Committee, created to monitor the Covenant, to receive and consider "communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant."<sup>2</sup> Another 10 years passed before these three instruments garnered sufficient ratifications to enter into force in 1976.

Globalization is a much recent phenomenon so we can only make an attempt to define it as it is dynamic in nature. Globalization can be defined as 'integration with a borderless world' which is rapidly shrinking thanks to revolutions in information technology (IT) and telecom, leading to information explosion. It is a new sphere of capitalism which involves a transition to a qualitatively new stage in the world system. One aspect of globalization with which we are more familiar, is the development of a global economy – trans – national companies, complex international trading agreements, global markets, the spread of a certain free-market culture to all parts of the world. It also makes a difference to what obligations we have in practice in respect to human rights. Global communications may make us aware of tragedies to which we can react, about which we did not know before and global technologies make distant actions possible which were not possible before. The emergence of the global information economy has brought about new pressures to bear upon the North – South divide or the relationships between the developed and developing countries.

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<sup>2</sup> Encyclopedia of Human Rights.

## Historical Development

The historical origins of the term human rights can be traced back to ancient Greece and Rome where it found a relation with the pre-modern natural law doctrine of Greek Stoicism. The expression "human rights" is relatively new, having come into everyday parlance only since World War II especially after the Nazi atrocities, which were termed as "crimes against humanity" when they came to light during the Nuremberg Trial. The first big step towards written articulation of the still nascent concern for human rights was taken in 1945 with the establishment of the United Nations. But this international concern for human rights did not spring totally new from the San Francisco Conference creating the U.N. There were historical antecedents of two kinds. The first was based on moral opprobrium. Examples were progressive outlawing of slavery and the slave trade; the progressive protection of humane values in warfare which started with the first Geneva Convention for the protection of the sick and wounded in land warfare in 1864. The second type of human rights measure was based mainly on state self-interest. The minorities treaties of the inter-war period attempted, though unsuccessfully, to implement the collective human rights of certain minorities in some European states because of the contribution of minority problems to the outbreak of World War I. State interest in preventing the practical problem of war was the chief aim of these treaties. But all these pre-1945 attempts at international action on behalf of human rights, whether morally or politically motivated, represented small exceptions to the basic idea that human rights was normally within domestic jurisdiction of nation-states. So no international action, prior to 1945, intruded on the state's authority within its political borders.

The significance of the landmark year of 1945 lies not only in the creation of the U.N Charter which broke with the dominant tradition of national sovereignty over human rights issues. Rather, the charter symbolised a step forward towards decisions that would

cumulatively internationalise human rights as a major issue. The charter of the U.N reaffirmed a "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." But the clause on "domestic jurisdiction" has given rise to legal and political controversy of quite a serious nature.<sup>3</sup>

Whereas legal theory and principles began to change in 1945, most global developments pertaining to human rights in a specific sense occurred only from 1967. Between 1967 and 1970, two sweeping covenants on civil-political and economic-social-cultural rights gained legal recognition for states adhering to them. The U.N Economic and Social Council authorised the U.N Human Rights Commission to inquire into the human rights situations of specific states and a systematic procedure was established for processing the private complaints about gross violation of human rights. By 1970, human rights as an issue occupied centre stage even from the politico-legal point of view as violation of human rights was seen as a source of international conflict and instability.

Today, albeit the development of a considerable body of international law on human rights and the growing proportion of time that public international organisations devote to human rights, nation-states remain the key to promoting and protecting human rights. Though the states have to contend with the other actors on the world arena, public and private, but they retain considerable authority and power. Though the developing nations comprise a large majority in the U.N, the Western nations, led by the U.S, have a decisive voice in the proceedings due their higher financial contribution or votes in the Security Council. After the European political revolution of 1989, leading to the effective dissolution of the Warsaw Pact and the Soviet control over most of Eastern Europe, not to mention continuing momentous events in the Soviet Union itself, there is no longer a

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<sup>3</sup> *ibid*

Stalinist bloc of votes. The East European nations, in a desperate attempt to revive their economy and address their security concerns, is clamouring to become a member of North Atlantic Treaty Organisation (NATO). Although the primary reason of NATO's birth is no longer applicable, there is no sign of it being dissolved. Instead, it seems to be keen on recruiting new members to its fold. As the only superpower in the world the arrogance of the United States, especially on the question of interfering in affairs of weaker nations, is a palpable force today. The unilateral decision to bomb of Iraq and Kosovo, ostensibly to safeguard the human rights of the people against Saddam Hussein and President Milosevik are two such cases. But the duplicity of American human rights concern was revealed to all when President Clinton, after blowing a lot of hot air on the issue, delinked the granting of Most Favoured Nation (MFN) status with the human rights record of that country. In the final analysis, the temptation of China's economic strength and its lucrative market proved too hard to resist for the American decision makers making a mockery of President Clinton's foreign policy rhetoric. Thus, implicit in this analysis is the fact that what happens in the name of United Nations is highly dependent on state policy. Nevertheless, one can look for some independent influence, to some extent, for those acting in the name of the U.N but not representing states. Individual members of the Secretariat as well as expert individuals on U.N bodies who are not officially instructed by states may also generate some impact on policy. Other factors at play include the activity of Non Governmental Organisations (NGOs), which function as interest groups, and climates of opinion.

But as we embark on a new century, the question arises whether the intervening years have brought about a paradigm shift on the issue of human rights. In the early 1970s the model of Realpolitik still dominated international relations theory and the Cold War dominated strategic thinking. The world in the 1970s was still one in which States were considered the key actors. Some political scientists grudgingly acknowledged a modest

role for organisations like the U.N, but almost no importance was accorded to the role of non-governmental organisations (NGOs). Human rights now has a prominent place in the international agenda; the U.N for all its shortcomings has been entrusted with enormous responsibilities for managing global problems, including human rights; and the importance of NGOs as international actors is now widely recognised. Human rights is now a respected area of study in its own rights and there is also a burgeoning academic human rights literature as well as a plethora of studies by NGOs and intergovernmental organisations (IGOs). What has produced so dramatic a change is the all-important question that comes to mind.

The paradigm shift has been occasioned by at least five significant developments. First has been the erosion of the concept of State sovereignty. In the context of human rights, this has meant that to a certain extent States can no longer hide behind the shield of "domestic jurisdiction" as they abuse the rights of its citizens. Of course the military and economic strength of the nations play a big role in how much "domestic jurisdiction" it can have. More than fifty years after the adoption of the Universal Declaration of Human Rights – that is after half a century of persistent lobbying and pressure by human rights advocates – there now exists a substantial corpus of international human rights law and a large number of arenas and mechanisms for dealing with human rights violations, at both the international and regional levels.

The second and related development leading to the paradigm shift has been the phenomenon of "globalization" – the fact that key issues and problems that once were national now defy national solutions.<sup>4</sup> This includes concerns such as poverty, environmental degradations, population explosion, the regulation of multinational corporations, the control of the drug trade and criminal syndicates and the need for

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<sup>4</sup> Ibid

humanitarian responses to natural disasters or civil wars. Together with the third development – the shrinkage of the globe brought about by the technological revolution in communications – and the fourth development – the end of the Cold War – this has caused states to turn increasingly to the U.N as well as other non - state actors for solutions to planetary crises.

If the progress made has been far beyond what might have been expected in the 1970s and certainly far beyond the expectations of the 1950s and 1960s, it is nonetheless sobering to consider the enormous gap between the ideals of international human rights law and the reality of continuing gross human rights violations in any kind of regimes, be it dictatorships or democracies. The gap between ideal and reality is also stark when considering women's human rights. At the Fourth Conference on Women's Rights held in Beijing in September 1995, governments committed themselves to ensure the full implementation of human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms.”<sup>5</sup> The situation of women raises questions about the sincerity of this commitment.

The debate on human rights is in the throes of acute controversy. The controversy is not confined merely to the traditional dichotomy between civil and political rights on the one hand and economic, social and cultural rights on the other. The controversy has in fact deepened and closely draws on the emerging redefinition of development problematique as is reflected in the discussions on the New International Development Strategy, the growing awareness of the centrality of the international dimension of development as found in the debate on the New International Economic Order and the increasing attention being given to the new thinking on alternative strategies of development and lifestyle.

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<sup>5</sup> “Beijing Declaration and platform for Action” adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, September 15, 1995.



## **American Human Rights Policy : An Overview**

The implementation of human rights is a responsibility of individual nations as well as of international institutions. While the United States envisions itself as the leader of the free world and a city on a hill to be emulated by others, U.S. multilateral diplomacy has been far from the forefront of efforts to create international regimes on human rights. An examination of the U.S. policy on this subject over the years would reveal its tendency of foot dragging and downright opposition if one dares to point a finger at the U.S.

### **1945-1952 :**

It is true that the U.S. was sympathetic to some mention of human rights in the U.N. Charter, but during Truman administration, U.S. foreign policy on human rights could be labelled one of limited support only. The U.S. was determined to keep the Charter language limited to vague generalities, resisting most of the efforts of the smaller states and private groups in favour of more specific and demanding obligations. The same orientation held for the Universal Declaration of Human Rights. Although Eleanor Roosevelt and her State Department advisers strongly supported the declaration, they were at great pains to emphasise a non-binding and aspirational character. Fear of international scrutiny of its domestic practices, in the south and elsewhere loomed large in U.S. calculations.<sup>6</sup>

### **1953 - 1974:**

The limited American support for internationally recognised human rights turned to outright neglect given Brickerism at home and Dullesism in foreign policy by 1953. Brickerism – that movement for a constitutional amendment limiting the treaty prerogatives

of the executive – caused the Eisenhower administration to eschew leadership on and participation in the development of formal human rights regimes. Whatever the merits of arguments for and against adherence to human rights treaties, Brickerism plus the debate on the genocide treaty left a lasting impression in the U.S. policy that human rights treaties were so controversial that they were better left alone. Thus the genocide treaty languished in the Senate until 1986 and the U.N Covenants on Civil-Political and Social, Economic and Cultural Rights were not even submitted until 1977. Most other human rights treaties suffered the same fate of neglect; the U.S. has become a party to only a half-dozen human rights treaties over the years, none of major importance save the Geneva Convention of 1949 pertaining to victims of armed conflict. Dullesism, the self righteous preoccupation with Soviet-led communism, solidified the notion that by contesting the Soviet Union, one was contributing to human rights. Thus, starting with the Eisenhower administration one saw the demise of human rights as a separate issue on the national foreign policy agenda and the collapse of U.S. human rights policy into its strategic policy. The fear of Communism bordering on paranoia led the U.S. on a path of gross human rights violations in various Third World countries all over the world. The countries like Vietnam, South Korea, Iran, Nicaragua, Guatemala, Chile became battleground for the war of ideologies leading to the institution of repressive regimes and other violations all in the name of protecting the newly emerging nations from the threat of communism.

In the interim, the Kennedy and Johnson administrations spoke of the need to promote democracy, especially in the Western Hemisphere through the Alliance for Progress which was to be the panacea for poverty and repression. The merger of human rights with containment of communism continued but this approach floundered due to the illiberal state capitalism that was synonymous with Latin America. By and large the

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<sup>6</sup> Jack Donnelly, International Human rights: Dilemmas in World Politic, (Westview Press, Colorado), 1993.99-101.

Kennedy administration was too short-lived to have much of an impact, and the Johnson administration was consumed by the Vietnam War which estranged the U.S. mainly from the U.N. where its policies were attacked both by the majority of members and by the Secretary General, U Thant. However, Johnson Administration saw major civil rights bill passed to remove all impediments to the African-American community in the U.S by ensuring its participation in the political and civil life of America.

The Nixon-Kissinger team downgraded both human rights as a separate issue and multilateral diplomacy still further by arguing against the intrusion of human rights into the calculus of geostrategy. The twin impacts of Watergate and Vietnam brought the Nixon-Kissinger team into disrepute. The trauma of Vietnam brought home to the American polity, among other things, the disturbing truth that resisting communism was not the same as protecting human rights. The de-linking of human rights with security policy of the U.S. was an inevitable fallout ushering in a third era of renewed interest.<sup>7</sup>

#### **1974-1980**

The appalling events of Vietnam and Watergate caused the Congress to reassert itself on foreign policy resulting in a revival of interest in internationally recognised human rights as separate issue. It was articulated that human rights meant rights defined by the International Bill of Rights (the charter provisions, the Universal Declaration and the two U.N Covenants). Although the U.S was not party to most human rights treaties, U.N developments on human rights affected Congress as it tried to compel the executive to consider human rights apart from a basically unilateral approach to anticommunism.

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7. David P. Forsythe, Human Rights and World Politics, (University of Nebraska, 1983)

Kissinger refused to be steered by congressional pressures to the end of his tenure under President Ford. The Carter administration did move somewhat in the direction desired by the Congress. Human rights was given great rhetorical prominence as a separate issue and at least some of his policies showed some genuine commitment to the subject at hand. Examples are the administration's opposition to the Byrd amendment permitting trade with Rhodesia and the concomitant support for U.N mandatory sanctions on the Ian Smith government; its vote in the Security Council for mandatory arms embargo on South Africa; its acceptance in principle of socio-economic human rights; its utilisation of the OAS to help rid Nicaragua of Somoza; and its submission to the Senate of four signed human rights treaties (the two U.N Covenants, the American Convention on Human Rights and the Convention on Racial Discrimination). However, available information indicates that the administration had to be pushed for action by Congress on various issues like human rights violations in Uganda and the executive was also successful in resisting Congress pressure to introduce consideration of internationally recognised human rights in the workings of financial institutions like the World Bank.

Yet, on balance, the Carter administration, building on the foundations set by Congress, did show - however inconsistently - renewed attention to internationally recognised human rights.

### **1981-1993**

The Reagan administration's policies on human rights were initially almost a caricature of U.S exceptionalism cum Cold War politics. At the U.N, the Reagan team was outspoken in its attacks on human rights violations by communist nations and equally outspoken in its defence of authoritarian allies like Chile, Argentina and Guatemala. There was some measure of change on these policies toward international standards and multilateral

diplomacy during the second Reagan administration, especially after 1985 when the U.S. was instrumental in introducing and lobbying for a resolution in the U.N Human Rights Commission critical of the Pinochet regime in Chile and Reagan also advocated the ratification of the Genocide Convention. But its basic stance of mainly focusing on human rights problems in the Communist countries did not undergo much of a change.<sup>8</sup>

During both the Reagan and Bush administrations, the U.S. sabotaged U.N efforts at international co-operation on human rights, environmental issues and arms control. The Bush government (in part reflecting congressional reluctance to authorise additional foreign aid) refused to commit the U.S share of the needed funds, a paltry \$3 million, for a 500-person peacekeeping force to protect relief workers in Somalia. The plan had to be abandoned for paucity of funds. Iraq's invasion of Kuwait led the U.S to bully, bribe and cajole the international community into endorsing and supporting a military operation in the Gulf that succeeded in expelling troops and restoring Kuwaiti sovereignty. But the human rights implication of the Gulf conflict has been horrendous, resulting in the expulsion of Palestinians from Kuwait in hordes; repression deepening in such Gulf War allies as Egypt and Saudi Arabia and Saddam Hussein free to turn the remnants of his army against Iraqi and Kurdish civilians who rose in protest at Desert Storm's end. The Bush administrations tacit support of China in spite of clear evidence of selling of nuclear weapons and related parts to Iran, Syria, Pakistan and Burma was another case in point. The end of Cold War generated broad optimism that human rights would gain prominence, not only in American foreign policy but in world politics as a whole. But the essentially opportunistic policies garbed in the moral cloak during the Cold War years was revealed in its true colours when President Bush combined excessive vilification of Saddam Hussein, which culminated in Operation Desert Storm,

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8. Ibid 6.

with embarrassing docility towards China because of its perceived importance economically and strategically.

### **1993-Present**

President Clinton's foreign policy was dominated by human rights issues (economic and trade issues aside) during the 1992 campaign. But in the face of reality the Clinton administration failed to honour its commitment in this regard. An examination of his policies would reveal his one step forward two steps backward manoeuvres regarding the subject of human rights.

The Clinton administration's policy has essentially resembled its predecessors: namely, prioritise human rights when competing concerns are insignificant, or, as with China, when public pressure compels a response. In Rwanda and Bosnia the administration displayed a passivity that was deadly for thousands, although, to its credit, the Dayton Accords ruled out amnesties for those in former Yugoslavia who ordered or committed atrocities. In Haiti, after 16 months of indifference and illegal forced repatriations of boat people, the U.S. intervention helped to lessen human rights abuses, but Washington then refused to give Haitian authorities seized documents that would have enabled them to prosecute those security officials responsible for severe human rights violations. Washington has generally blocked efforts to seek truth and justice for past abuses, especially those committed by FRAPH, a paramilitary organization reportedly founded with Central Intelligence Agency (CIA) assistance.

The United States's China policy is a telling reflection of Washington's ambivalent attitude on human rights. A major focus of U.S. commercial and strategic interests, China routinely engages in a wide range of severe and systematic abuses, which is highlighted

by Chinese human rights activists and political reformers. As a presidential candidate, Clinton had vigorously criticized Bush administration policy in the wake of the Tiananmen Square massacre. In May 1993, President Clinton issued an executive order linking renewal of trade benefits to human rights improvements, but over the following year sent mixed signals regarding his intention to hold China to those conditions. In 1994, trade benefits were renewed despite the absence of human rights improvements, and the question of linkage was dropped. To cover its retreat, the administration has asserted a false choice between a policy of isolation and one of engagement, claiming the relationship was too important to be held hostage to a single issue. Nevertheless, when the administration was more successful in threatening to end trade concessions over issues such as copyright piracy, there was no clamour from the corporate community about holding the relationship hostage to single issue diplomacy.

During the U.S.-China summits in 1997 and 1998, Clinton spoke out forcefully on human rights to respond to the U.S. constituencies concerned with abuses such as forced prison labour, the denial of freedom of religion, and Tibet. But the administration failed to use negotiations for the summits—which China badly wanted—to secure significant Chinese reforms, settling instead for token gestures such as the release (and immediate forced exile) of prominent dissident Wei Jingsheng and the resumption of a bilateral human rights dialogue.<sup>9</sup>

American policy towards India regarding human rights has been dictated by political, economic and security related issues rather than any real concern for the abuse of rights. The attitude of the U.S has been largely hostile on issues of child labour, police and army's alleged human rights violations in Punjab, Kashmir and north-eastern states

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9. Nalini Kant Jha, "Promoting Human Rights: President Clinton's Foreign policy - Dilemma in a Changing International Order", India Quarterly, Vol. 51, No. 4, pp. 65-78.

during insurgency. Admittedly, child labour – particularly in some of its most degrading forms – is reprehensible, but it also plays an important part in poor, over-populated economies by providing relatively productive employment to children who would otherwise starve and turn into incorrigible delinquents. The motive of the U.S remains suspect due to the soft stand taken against China and Pakistan because of their economic and strategic importance respectively. The linking of trade with child labour is also viewed as a protectionist ploy than any real distress for human rights because sanctions have affected the poor adversely. The International Labour Organisation (ILO) has defined “social clause as follows, “In the context of international trade, a social clause essentially refers to a legal provision in a trade agreement aimed at removing the most extreme forms of labour exploitation in exporting countries by allowing importing countries to take trade measures against exporting countries which fail to observe a set of internationally agreed minimum labour standards.”<sup>10</sup> Washington has been in the forefront of the campaign to erect extra-tariff barriers to keep out goods from the Third World, supported by countries such as France and by trade unions which are worried about the effect increasing imports from the developing economies will have on employment in their own countries.<sup>11</sup> (Social Clause Hurdle :Business Line 1995)

In the case of Myanmar, though the U.S has passed sanctions and condemned the military government, American policy has remained in a state of limbo except in the area of narcotics. The reason for this indifference towards Burma is its relative unimportance strategically and economically.

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10. See International Labour Organization’s definition of Social Clause.

11. “Social Clause Hurdle,” Business Line, 1995.



The most crippling feature of U.S. human rights policy abroad is its transparent selectivity. Nowhere is this so pronounced as in the Middle East. From Morocco to Bahrain, human rights concerns are consistently trumped either by questions of military and corporate access or by the "peace process." The exceptions are Libya, Iraq, Sudan, and Iran, where criticism of their atrocious human rights records meshes with broader U.S. efforts to stigmatise and delegitimise. Israel and Egypt – which account for 91% of global U.S. military and economic aid – and Saudi Arabia – the largest customer for U.S. weapons – are insulated from even the mildest and most indirect forms of public rebuke, and the U.S. has made no discernible effort to use its leading role as donor and arms supplier to promote human rights.

In the key areas of international justice and accountability, the Clinton administration has been especially recalcitrant. Washington has supported international tribunals dealing with the atrocities in Rwanda and in former Yugoslavia – where no U.S. citizens are at risk of indictment – but has worked to cripple the proposed International Criminal Court, in order to ensure that no U.S. citizen ever comes under its jurisdiction.<sup>12</sup> (The Cancer of Human Rights).

Although the two international covenants were opened for signature in 1966, the U.S. did not ratify the International Covenant for Civil and Political Rights (ICCPR) until 1992 and still has not ratified the International Covenant for Economic, Social and Cultural Rights (ICESCR). In 1994, the Clinton administration secured ratification of the Convention Against Torture (CAT) and the Convention on the Elimination of All Forms of Racial the Rights of the Child (CRC). Nor has the U.S. joined any of the major International Labour Organization (ILO) conventions guaranteeing core labour rights to organise and engage.

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12. John A. Gentry, "The Cancer of Human Rights", Washington Quarterly, Vol. 22, No. 4, (Autumn 1999), pp. 95-112.

in collective bargaining.

The post Cold War dilemma in American foreign policy regarding human rights gets further accentuated by voices emanating from developing countries, particularly from Asia, that challenge American human rights initiatives as cultural imperialism on ancient civilisations like China, Singapore, Malaysia, and Myanmar. But the main bone of contention is the Western attempt to link the practice of human rights with trade, arrogantly assuming the Western model of human rights to be universal, without taking into account the specific socio-cultural milieu of a country. The entire debate concerning the issue of "social clause" is perceived as fraught with double standards. The grassroots movements in the developing countries, spearheaded in part by globalization, is integral to the issue of human rights. Their goal is to evolve an alternative approach to development which is more holistic, transcends economism and addresses issues of material, spiritual and cultural well-being of the people.<sup>13</sup>

Looking at American human rights policy from a distance of time, it is clear that the U.S has had difficulty with interdependence. It wants to project itself as a shining city on a hill whose conduct is above any criticism though few other governments are ready to do so. Only if the United States moves away from exceptionalism, it might learn some important lessons from international standards on human rights and from practices of other countries, that would improve its own society.<sup>14</sup>

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13. Ibid 9.

14. Richard Falk, "Half Century of Human Rights", Australian Journal of International Affairs, Vol. 52, No. 3, (1998), pp. 255-272.

## CHAPTER 2

### CONTRADICTING AMERICAN HUMAN RIGHTS POLICY TOWARDS CHINA

#### **Introduction**

The United States faces no more challenging international relationship than with China. For more than two centuries, America and China have fascinated each other, traded with each other and, unhappily, sometimes contended with each other. Before the collapse of the Soviet Union, the American strategy was to use China as a wildcard, which was then called in diplomatic parlance "China card", in the Cold War politics. But in the post-Cold War era the usefulness of playing Beijing off of Soviet interests is no more relevant. Now there is a serious question whether the United States has any real policy toward China, other than supporting the interests of American business. U.S. objectives in China seem to be driven more by quarterly profit considerations, access to cheap labour and of cultivating consumer and middleclass value among the billion Chinese to undermine the Communist structure. This is made all the more possible by Deng Xiaoping's policy of implementing market reforms.

The issue of human rights and democracy have been debated in China for more than a century. The fact that this issue has not died out, but instead has become even more conspicuous with the passage of time indicates its bearing on China's development and foundation. Broadly speaking, there are two attitudes in China towards human rights and democracy. One is to view human rights as a product of Western culture, a value system that the West wants to impose on China which is not suitable to Chinese sentiments. China's response is summed up by Prime Minister Li Peng, who states that China "must constantly resist, criticize.... Western capitalist concepts of philosophy,

politics, journalism, literature and art.”<sup>1</sup> Instead of prioritising civil-political rights, officials in Beijing believe that the need to “ensure food, clothing, shelter, transportation, education, employment and cultural activities” is of more importance. The other attitude regards human rights and democracy as a better social system for safeguarding human dignity and interests and also a way for China to avoid its past road of pain and suffering. Even in the international arena, in many democratic countries and elsewhere, human rights and democracy are regarded as products of Western religions and western culture and are considered difficult to establish in a country which is officially atheist.

The debate over “Chinese values” has spread far beyond the circle of people with an interest in China. This is because of the universal nature of the issues at the centre of the debate: Are human rights universal or cultural? Is a culture essentially static or dynamic, enclosed or open? Are human rights individualistic or collective? Or, in other words, how can individual rights and collective interests be balanced?<sup>2</sup>

None of the member states of the United Nations has a completely clear conscience on matters of human rights. In the United States, President Clinton has given higher priority to human rights than any president since Jimmy Carter, but the rest of the world sees the United States as a country with a history of black slavery and genocide against its indigenous Indian population, and a present situation with respect to social and economic rights characterised by high income inequality and homelessness, drug addiction and crime. Yet these problems are rarely discussed by U.S. officials as questions of human rights.

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1. Lee Peng quoted in Denny Roy, “Singapore, China and the ‘Soft Authoritarian’ Challenge”, Asian Survey, vol. 34, no. 3, (March 1994), pp. 235.

2. Michael C. Davis, ed., Human Rights and Chinese Values: Legal, Philosophical and Political Perspectives, (Oxford University Press, Hong Kong, 1995).

The inconsistency between United States political and economic ties with China complicates the relationship. In the past, the two were always in balance: in the 1950s the United States and China were completely hostile towards each other resulting in no trade; in the 1970s the two nations were cautiously interacting with each other both politically and economically; the mid-1980s saw the heyday of political, military and economic ties. But the violent crackdown on pro-democracy demonstrators in and around Beijing's Tiananmen Square on June 3-4, 1989, changed the perceptions about China in the United States. For the U.S, Tiananmen Square was less an example of Chinese brutality than it was an event that jarred policymakers into seriously rethinking the value of China in a world absent of the Soviet threat.<sup>3</sup> The U.S was never overly concerned about the civil and political rights in China as long as the People's Republic of China (PRC) could fulfil U.S goals vis-à-vis the former Soviet Union. But once the global audience witnessed the tanks crushing the students uprising, the U.S had no choice but to decry the act, as well as the regime and the political system that perpetuated it. In essence, without a Soviet threat, Tiananmen Square was the event that shattered American bipartisan consensus over playing the China card.

## Background

The Chinese Communist came to power the year after the adoption of the Universal Declaration of Human Rights in 1948. In the following decades the international human rights movement gained popularity and legal standing. Although China has not ratified either the Covenant on civil and political rights or the Covenant on economic, social and cultural rights, since 1980, it has acceded to nine less controversial conventions on human rights, including those on the rights of women, children and refugees, and those

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3. Donald Altschiller, ed., China at Crossroads, (The H.W Wilson Company, New York, 1994) The Reference Shelf, vol. 66, No. 7.



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against genocide, racial discrimination and torture. In time, numerous international labour conventions China had ratified before 1949 were also recognised.

China has been less than forthcoming when it comes to reporting on its human rights problems and responding to UN questions about them – even when they fell under the purview of covenants the government had signed. China made no progress in ratifying the International Covenant on Economic Social and Cultural Rights or the International Covenant on Civil and Political Rights. Both were under review by the Standing Committee of the National People's Congress.<sup>4</sup>

The two core elements within the PRC's human rights policies are a relativist emphasis on China's national situation and an instrumentalist perspective on the political use of human rights. The relativist national-situation argument holds that China's national characteristics prohibit the application of universal standards of civil and political liberties. The second predominant element in the PRC's human rights policies concerns is the view that human rights issues are inherently politicised.<sup>5</sup> The "relativist" perspective argues that the application of universal notions of human rights in non – "Western" countries either represents "neoimperialist" intentions by capitalist "core" countries or ignores the particularities of the peripheral countries' political, social and cultural traditions.<sup>6</sup> The dual nature of the PRC's human rights policy – a relativist national situation perspective and the inherent politicization of human rights – remain central to the PRC's human rights policies. Nonetheless, the economic reforms initiated by Deng Xioping and carried further by reformist leaders Hu Yaobang and Zhao Ziyang have

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4. James D. Seymour, "Human Rights in China", Current History, Vol. 93, No. 584, (September 1994), pp. 256-259.

5. Michael J. Sullivan, "Development and Political Repression: China's Human Rights Policy Since 1989", Bulletin of Concerned Asian Scholars, Vol. 27, No. 4, (October-December 1995), pp. 24-39.

6. James C. Hsiung, ed., Human Rights in East Asia: A Cultural Perspective, (New York: Paragon House Publishers, 1985).

created new tensions and dilemmas for the PRC's human rights policies. Today, China's human rights activists do not perceive themselves to be part of a U.S. – led "peaceful evolution" conspiracy. Rather, they see themselves as sharing with the aspirations with the international human rights movement.<sup>7</sup>

The end of the Cold War not only transformed America's ideological perspective on China, it also transformed American foreign policy. In the context of superpower conflict, in the 1970s and 1980s Washington developed successful policies to maximize U.S. security against Soviet power. U.S. policy toward China was not an exception. The agenda of U.S.-China relations emphasised security and economic co-operation. Despite the extreme totalitarian repressions of the 1970s and the ongoing repression of the 1980s, human rights issues were not a major concern of U.S. leaders. Similarly, the United States considered the Taiwan issue and Chinese missile proliferation as problems to be managed so that Washington and Beijing could maximise co-operation against Soviet power. With the end of the Cold War this balance of U.S. interests and values faced severe questioning as Americans revived traditional arguments about the role of ideology and principles in American foreign policy.

### **Clinton's China Policy**

Bill Clinton made human rights in China an important issue in his campaign for the presidency in 1992. Both supporters and political opponents expected that Clinton's election to the White House would mean important changes in U.S.-China policy. There were important changes as it turned out but not in the way that most people expected. Clinton in 1993 imposed conditions on granting China Most Favoured Nation (MFN)

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7. Michael J. Sullivan, "Development and Political Repression: China's Human Rights Policy Since 1989", Bulletin of Concerned Asian Scholars, Vol. 27, No. 4, (October-December 1995), pp. 24-39.

status, with a year's grace period for the Chinese to comply. However when in 1994, Beijing failed to comply, Clinton backed down, lifting the conditions that he had imposed a year earlier. The story of the evolution of Clinton's China policy is emblematic of the tension between American ideals and interests, between ideology and pragmatism, evident in the debate over China policy since the June 4, 1989, Tiananmen massacre.<sup>8</sup>

The situation has not improved since, according to the U.S Department of State Country Report on Chinese Human Rights (1999), "The People's Republic of China (PRC) is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount source of power. At the national and regional levels, Party members hold almost all top government, police, and military positions. Ultimate authority rests with members of the Politburo. Leaders stress the need to maintain stability and social order and are committed to perpetuating the rule of the CCP and its hierarchy. Citizens lack both the freedom peacefully to express opposition to the Party-led political system and the right to change their national leaders or form of government. Socialism continues to provide the theoretical underpinning of Chinese politics, but Marxist ideology has given way to economic pragmatism in recent years, and economic decentralization has increased the authority of regional officials."<sup>9</sup>

Despite bilateral differences in areas ranging from weapons proliferation to human rights, President Clinton vowed that the United States would not change its policy toward China in a way that would isolate that country from what he called "the global forces that have begun to empower the Chinese people to change their society and build a better future." Isolating China "would leave the people of China with less access to information,

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8. Robert A. Manning, "China and Strategy – Clinton and China: Beyond Human Rights", *Orbis* Vol. 38, No. 2, (Spring 1994), pp. 193-205.

9. U.S Department of State Country Report on Chinese Human Rights, 1999.



less contact with the democratic world, and more resistance from their government to outside influence and ideas," he said. "Our long-term strategy must be to encourage the right kind of development in China -- to help China grow at home into a strong, prosperous and open society, coming together, not falling apart; to integrate China into the institutions that promote global norms on proliferation, trade, the environment, and human rights," he continued. "We must build on opportunities for co-operation with China where we agree, even as we strongly defend our interests and values where we disagree. That is the purpose of engagement. Not to insulate our relationship from the consequences of Chinese actions, but to use our relationship to influence China's actions in a way that advances our values and our interests." Clinton stated, "We have an interest in encouraging China to respect the human rights of its people and to give them a chance to shape the political destiny of their country. .... Because wealth is generated by ideas today, China will be less likely to succeed if its people cannot exchange information freely. China also will be less likely to succeed if it does not build the legal and political foundation to compete for global capital; less likely to succeed if its political system does not gain the legitimacy that comes from democratic choice."<sup>10</sup>

The President emphasised that almost every goal to which China's leaders are dedicated, from maintaining stability to rooting out corruption and reuniting peacefully with Taiwan, would actually be advanced if their government embraced greater openness and accountability. The U.S has been maintaining unofficial relations with Taiwan which is viewed as a democratic country. This has also been a bone of contention between U.S and China.

President Bill Clinton's administration faces a number of questions which play a crucial

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10. President Clinton's 4/7 Speech on U.S. Policy Toward China (U.S. will "seek the truth from factsonChina.

role in devising a policy towards China. In his 1997 inauguration speech, President Bill Clinton said: "Our hopes, our hearts, our hands are with those on every continent who are building democracy and freedom. Their cause is America's cause." The President's stated foreign policy goals were as follows: promote democracy and freedom world-wide, resuscitate the American economy and America's international economic strength and ensure American and global security. But Clinton had to swallow his rhetoric, break the link between trade and human rights and extend China's Most Favoured Nation status. But what should be the hierarchy among these issues? Should one issue dominate? Can one pursue all three at the same time and still maximise the national interest?<sup>11</sup>

The end of the Cold War has drastically reduced American concerns with military security while increasing those regarding economic issues. Clinton was elected president precisely because he voiced the concern of the American public about the changing global economic environment. His concern with democratisation and human rights also struck a cord deep within the American body politic. The crux of the problem is that economic growth, particularly trade-based growth, is an interdependent process; without markets for exports, there is no growth, and without imports there is no comparative advantage. If pursuing a foreign policy based on expanding human rights globally undermines access to markets, leads to large increases in the prices Americans pay for goods and complicates security relations with a major global and regional power, what is the path that the President should adopt? This question neatly sums up the present dilemma of the U.S president.

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11. Mark Levinson, "China, the United States and Human Rights", *Dissent*, Vol. 44, No. 2, (Spring 1997), pp. 10-12.

In order to understand American concern for human rights in China one needs to read between the lines. China's human rights abuses are in the limelight not because they are exceptionally gross but because its market is huge and it is well on its way to becoming a major economic power in the future. Sanctions are promoted as being in the best political and economic interests of both American and Third World workers. The commonly held view is that more human rights in developing countries would translate into more political clout for labor and hence better working conditions. Thus, trade sanctions are seen as a means of combining political idealism and economic pragmatism by many American progressives and people elsewhere. It would kill two birds – China's gulag and stagnating U.S. wages allegedly caused by free trade and cheap foreign labor. A look at the record of what U.S. sanctions have achieved is called for at this point.

Economic sanctions, especially unilateral ones, have a mixed record, as a recent essay in *Commonweal* shows. U.S. sanctions have kept Cuba poor, but have not achieved their purpose: the downfall of the Castro regime. Multilateral sanctions against Serbia and Iraq have had mixed results politically, and the sanctions against Iraq, which have caused dire shortages of food and medicine, may themselves now constitute a form of human rights abuse, especially against children. The embargo against South Africa may be the one sterling example of success: along with other factors – economic, cultural, and athletic – isolation contributed to real political and moral change, a turn to equality and the end of apartheid. So the argument against withdrawing most-favoured-nation trading status from China or imposing economic sanctions has some truth: the decline of a command economy and the free movement of people and goods associated with a capitalist economy may bring in their wake political reforms, democracy, and civil liberties.

The advocates of sanctions as a means to bring China to heel say that there are both moral and economic reasons for linking trade and labour rights. The moral reason is to limit the exploitation of workers. Americans should boycott goods of multinational corporations (MNCs), which profit from using impoverished workers who, because they lack basic rights, are unable to fight for better working conditions. The economic reason to link trade and labour rights is to make it possible for workers in countries like China to raise their living standards. In order to boost the purchasing power of the workers and achieve sustainable growth it is imperative to raise their living standards. This resulting increase in consumption in developing countries helps to create a domestic market. This benefits developing countries as well as spurring exports from developed countries.

As to why the Clinton administration is appeasing China by delinking human rights from the granting of most favoured nation status is more complex. Whether it is based on a belief that America's relations with China should not, as Madeleine Albright recently said, be held "hostage to one issue, whether it be human rights or trade"<sup>12</sup> or because the administration fears the economic consequences of angering China's oligarchy, which considers human rights an internal affair is the question. Despite what Albright has said, American relations with China are defined by the consideration of economic interest in China. But the question arises: whose interest is one talking about here?

The Clinton administration and its business supporters stress the number of American jobs created by trade with China. However, U.S. exports to China amount to a mere two percent of overall American exports. The real business interest in China is not protection

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12. Ibid.

of U.S. jobs but access to China's vast supply of cheap labour. In the U.S. the investment in China climbed from \$358 million in 1990 to \$25 billion in 1996.<sup>13</sup> Most of the goods made with cheap Chinese prison labour is exported back to the United States. These exports – air conditioners, auto parts, toys, textiles and apparel, electrical machinery, shoes – are highly profitable for the companies but they undercut the bargaining power of labour in the U.S. and frequently take away jobs.

The conventional view is that trade automatically benefits all. The opposite is increasingly true. The conditions under which many products are made in the developing world are abominable. Linking trade to worker rights does not prevent a country from using low wages to initiate development. However, it does prevent countries from gaining competitive advantage by suppressing wages and violating basic labour rights. Workers must be able to organize and bargain to improve their conditions on terms compatible with their countries' stage of economic development.

According to certain analysts, U.S. has leverage over China because it is China's largest overseas market. U.S. imports more than one-third of China's exports. Even a partial loss of access to the American market would be a serious blow to Chinese economic expansion. On the other hand, there are those who believe that the best policy to pursue would be "constructive engagement". But here the question arises what determines whether the policy is working? Has some measure of democratic rights really been won? Do independent trade unions exist? Do workers have the right to strike? Are dissidents, even those within the ruling party, allowed to speak? By these criteria Clinton's policy is a dismal failure. According to Human Rights Watch Asia – "China's small but formerly

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13. Ibid.

vibrant dissident community has been all but crushed; repression of nationalist and ethnic minority movements is the most severe in years; an intense crackdown is underway against all forms of unauthorized religious belief and worship; and the numbers of judicial executions in China are now greater than at any time since 1983.”<sup>14</sup>

China has been using economic pressure against those who criticise its human rights practices. When the German Bundestag adopted a resolution critical of China's policies in Tibet, Beijing cancelled a visit by foreign minister Klaus Kinkel and threatened to take its business elsewhere. When China was purchasing aeroplanes, it used competition between a European company, Airbus and America's Boeing as a means of silencing both European and American critics. The policy of stamping out any kind of dissent has not been reversed in any manner. Wei Jingsheng, who served a fifteen-year jail sentence for calling for more democracy in 1978, was jailed again in 1994 after meeting with an American human rights official.

What kind of pressures might work on China? If governments, including American, are unlikely to engage in punitive economic measures, are there other strategies? The example of South Africa calls to mind the pressure that U.S. stockholders brought to bear on companies doing business there, if only by embarrassing them. Can the people doing business with China be persuaded to observe international labour standards in their factories? Can they provide alternative educational or social welfare services to their employees? In a similar fashion, pension funds and individual pension accounts ought to be scrutinised for investment in China.<sup>15</sup>

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14. Margaret O'Brien Steinfels, "China, the United States and Human Rights", *Dissent*, Vol. 44, No. 2, (Spring 1997), pp. 12-13.

15. *Ibid.*

There is dire need for a progressive agenda for human rights that is more than a knee-jerk response to the multinationals that are shaping post-cold war foreign policy. To protect its own profitability, business opposes economic sanctions against human rights violators. Then again, sanctions aren't necessarily the panacea of all ills. The record of the U.S has been somewhat less than sterling in matters regarding sanction showing a marked preference towards acting for human rights when the violators were small countries not allied to or protected by the United States: Haiti, not Guatemala (until recently), Burma (weakly), not Indonesia. It is also a fact that it is against the interest of the U.S to turn a potential great power into an enemy. Thus, strategic and economic interests in "engagement" have become far too easy excuses for passivity on human rights. China needs access to American markets far more than America need to penetrate and invest in China's: the U.S increasing deficit in trade with China provides them with a weapon. There is a whole range of measures available to them. Loss of the most-favoured nation status may not be the most effective. But other measures like refusing to buy goods produced by that part of the Chinese economy that is still under state and military control, and goods fabricated with coerced and prison labour.

An essential element of a progressive strategy is that the fight for human rights can't be imposed from without. It has to engage large numbers of people from within. To broaden the movement, human rights themselves have to be defined broadly. As long as the Chinese regime remains what it is, it will do its best to limit the effects of the economic "opening" of China, so as not to be endangered by it. An active human rights policy by the United States would gradually force China's rulers to choose between the controlled insertion into the world economy they seek and need, and change in their political practices. As long as America remain passive, they have no incentive to alter them.

In 1948, the UNHCR unanimously endorsed four types of human rights: political (the right to free elections); legal (the right to due process); social (the right to form organisations); and economic (the right to a job and life-preserving health care). The United States has ignored the last right, domestically and internationally. Yet honouring both economic and social rights is critical in building a popular human rights effort. By contrast, economic policies in China and other emerging economies have created economic miracles, with massive job creation and real wage increases. Therefore, there is intense grassroots hostility in these countries toward international incentives that jeopardise such growth in the name of either promoting or defending dissent. The issue of inclusion of "social clause" in the WTO agreement is fraught with problem because it is perceived, and rightly so, as a ploy of the developed nations to protect its own markets while gaining access to developing countries. The developed countries have been tenaciously pursuing the "social clause" stipulation as a basis for international trade in their effort to stop "cheap" Third World goods from flooding their markets.

In many respects, the opposing faces of realist manipulation of human rights have both been exemplified by the approach taken by the Clinton administration to its relationship with China. So long as the issue of respect of human rights was one of ideological posturing within the U.S, it seemed expedient to highlight the human rights abuses that China had perpetrated with emphasis on the bloody crackdown of Tiananmen Square in June, 1989. But in 1997, U.S started viewing China from the perspective of an economic superpower and a major trading partner, due to its successful recovery from the Asian crisis. This shift in emphasis gave rise to extensive commentary in relation to President Clinton's visit to China in June 1998. On one side there were those who felt bitterly disappointed like Wei Jingsheng on the other the realist counter – attack was equally vigorous. Charles Freeman Jr., First Assistant Secretary of State of Defence for International Security Affairs, insisted that it was time to approach China from a strategic



viewpoint rather than persist with the human rights agenda: "...the administration accepted that it was going to have to deal with seriously with China, that China was more than a theme park for the human rights advocates and the Dalai Lama's followers".<sup>16</sup> The impression created by this remark was that the earlier insistence on human rights was an essentially frivolous way for the U.S to approach a state of such size and importance as China. The moment had now arrived when the U.S to pursue its real interests that was based on economic opportunity and the calculus of power relation in Asia.

### **The Tibetan Dilemma**

Sprawling over 12,21,700 square kilometres and with a population of 18,90,000, the inaccessibility of Tibet, known as the Roof of the World, could probably explain why its people have been very isolated and have lived with their belief in matters such as reincarnation without any concern about their sounding arcane at the dawn of a new century. Tibet's virtual seclusion from the rest of the world seems to have left the monastic way of life of its clergy undisturbed. Even when monasteries came up beyond Tibet, they could remain aloof. The image which Tibet has given out is one of "secrecy". Its history is shrouded in mysticism with the facts seemingly traceable only up to A.D 570-620.

Although historically speaking, Beijing can lay claim to most of China's territories with large or majority population of ethnic groups that are minorities in the context of the PRC, in case of Tibet the assertion is subject to challenge. The Chinese now base their claim to Tibet on the fact that the Mongols and Manchus conquered both China and Tibet. However, during the Ming dynasty and the Republican period, the two most recent

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16. Richard Falk, "Half Century of Human Rights", Australian Journal of International Affairs, Vol. 52, No. 3 (1998), pp. 255-272.

stretches of ethnic-Chinese rule, the present "Tibet Autonomous Region" was, in all essential respects, independent; during these periods and even under the non-Chinese dynasties, Tibet's leaders were chosen by Tibetans, not China. Before coming to power the Communists promised self-determination for such areas, but in 1951, representatives of Tibet's leader, the Dalai Lama, were forced to sign an agreement acknowledging Chinese sovereignty. This agreement was completely unequal and for various reasons is of questionable legality. The Chinese also ignored many of its provisions, and the Dalai Lama's government in exile considers it no longer binding on Tibet.<sup>17</sup>

According to the international human rights covenants a "people" of a disputed territory with a plausible argument for sovereignty should decide for themselves whether they are to form an independent country or be annexed to another country. Although what constitutes a "people" is not clearly stated, in 1961, the U.N General Assembly declared that the Tibetans met all the requirements for self-determination. Furthermore, Tibetans have suffered violations of their civil rights on a large scale. Over the years a large number of people have been killed. During the cultural revolution, most of Tibet's Lamaist Buddhist temples, central to the nation's culture, were destroyed, and religion is still strictly monitored. These and other human rights violations generated massive anti-Chinese sentiment. Predictably, Beijing has retaliated by keeping many Tibetan dissidents in prison.

Media reports from China raise doubts whether it sticks to the Marxist disdain for religion. It recently "enthroned" a two-year-old boy Raiqen and has expressed the hope that he would love the ruling communist party. The Government's decision was conveyed to the boy by Mr. Legog, Chairman of the Tibet Regional Peoples Government when he visited the "reincarnation of Raiqen, the living Buddha". The Xinhua news

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17. Encyclopedia of Human Rights.

agency further said the Raiqen would carry on the tradition of patriotism "embodied by the former living Buddhas as well as their desire to preserve the unity of the Chinese nation". The Government continued to insist that the boy it selected and enthroned in 1995 is the Panchen Lama's 11th reincarnation. The boy has appeared publicly in Beijing only on rare occasions and has not been permitted to visit Tibet in over two years. In February, the boy attended a religious ceremony at a monastery in Beijing. At all other times he was held incommunicado by Chinese authorities. Meanwhile, the Government also continued to detain Gendun Choeyki Nyima, who the Dalai Lama designated the 11th Panchen Lama. The boy's family also was detained. The Government refused to provide access to either of the boys or their families, whose exact locations were unknown. Local authorities say that both boys are being well cared for and receiving a good education, but the Government has not allowed international observers the access necessary to confirm this. The majority of Tibetan Buddhists recognise the boy designated by the Dalai Lama as the Panchen Lama. Tibetan monks have claimed that they were forced to sign statements pledging allegiance to the boy the Government selected as the reincarnation of the Panchen Lama. The party also urged its members to support the "official" Panchen Lama, and the Propaganda Department of the Communist Party Committees at both the regional and city levels had pictures of the boy printed for use in public and private religious displays.<sup>18</sup>

Tibetans in exile in India have sought the country's support for a US-sponsored resolution in the United Nations Human Rights Commission seeking to censure alleged repression of Tibetans by the Chinese authorities. Tashi Wangdi, a special representative of the Dalai Lama, has said, "...improved human rights situation in Tibet would relieve

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18. Human Rights Watch World Report 1999, China and Tibet.

India of the burden of hosting hundreds of refugees from Tibet who continue to flee their homeland due to "oppression and heightened surveillance". Wangdi said that despite economic liberalisation and changes in areas of trade and commerce, political freedom continued to be a distant dream in China. Expressing the hope that India would look at human rights situation in Tibet in a larger context, he said any sympathy with the Tibetans would not affect New Delhi's ties with Beijing.<sup>19</sup>

The Dalai Lama alleges that the Communist invasion of Tibet started in 1949 and the 1951 agreement was signed under duress. For centuries before, the relationship between Tibet and China was one of priest and patron. The uprising on March 10, 1959 was brutally suppressed. He is deeply upset by the mass population transfer, resulting in the Chinese outnumbering Tibetans by more than 20 times. Human rights are generally not guaranteed even though there has been progress in education, communication and healthcare. The growing militarisation of Tibet and dumping of nuclear waste there disturb the Dalai Lama deeply. The Chinese, the Dalai Lama alleges, are changing the face of Tibet with cultural colonialism, demographic aggression through mass population transfer, growing militarisation and denial of human rights to the locals.

The Chinese Government strictly controls access to and information about Tibet. Thus, it is difficult to determine accurately the scope of human rights abuses. However, according to credible reports, Chinese government authorities continued to commit serious human rights abuses in Tibet, including instances of torture, arbitrary arrest, detention without public trial, and lengthy detention of Tibetan nationalists for peacefully expressing their political views. Tight controls on religion and on other fundamental freedoms

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19. The Hindu, April, 11, 2000.

continued, and intensified during the year. According to the Tibet Information Network (TIN) political protest by and detention of Tibetans is both increasing and spreading throughout ethnic Tibetan areas. TIN reports that the number of Tibetans resident outside of Lhasa or its seven counties who became political prisoners increased from 104 during the period from 1987 to 1992 to 367 during the period from 1993 to 1998, a 350 percent increase. For Lhasa counties the increase was 14 percent. Although China agreed to discuss human rights issues with representatives of foreign countries and international organisations and to allow several official visits to Tibet, there has been no progress in transforming this into concrete improvements in Tibet.

### **Concluding Remarks**

Relations between the United States and China have been notable for their fluctuations, ambivalent mutual images and inability to find a constructive and cooperative equilibrium. Bilateral relations and mutual images either have been frozen in Cold War conflict or have swung markedly from embrace to acrimony and back again time after time.<sup>20</sup> U.S. policy toward China reflects Washington's core ambivalence on human rights. China is a major focus of U.S. commercial and strategic interests. But it engages in a wide range of severe and systematic abuses. Chinese human rights activists and political reformers have kept the issue prominent. As a presidential candidate, Clinton had vigorously criticized Bush administration policy in the wake of the Tiananmen Square massacre. In May 1993, President Clinton issued an executive order linking renewal of trade benefits to human rights improvements. However, over the following year, he sent mixed signals regarding his intention to hold China to those conditions. In 1994, trade benefits were renewed despite the absence of human rights improvements, and the question of linkage was dropped. To cover its retreat, the administration

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20. David Shambaugh, "The United States and China: A New Cold War?", Current History, Vol. 94, No. 593, (September 1995).

has justified its stand. by asserting that the choice was between a policy of isolation and one of engagement. In view of China's importance the latter choice was more appropriate. It also claimed the relationship was too important to be held hostage to a single issue. But when the administration more successfully threatened to end trade concessions over issues such as copyright piracy, there was no clamour from the corporate community about holding the relationship hostage to single issue diplomacy.

During U.S.-China summits in 1997 and 1998, Clinton spoke out forcefully on human rights to respond to U.S. constituencies concerned with abuses such as forced prison labor, the denial of freedom of religion, and Tibet. But the administration failed to use negotiations for the summits – which China badly wanted – to secure significant Chinese reforms, instead settling for token gestures such as the release (and immediate forced exile) of prominent dissident Wei Jingsheng and the resumption of a bilateral human rights dialogue. Like his predecessors, the Clinton administration's policy has given priority to human rights when competing concerns are insignificant or, as with China, when public pressure compels a response. The issue of human rights have been consistently subordinated to other policy objectives like increased trade and military co-operation. The overall credibility of the U.S. has been severely undermined as a power who practice what it preaches because it has consistently exempted key allies from criticism without regard to their abuses. For many countries, especially in the Middle East, the abuses documented in the State Department's Country Reports have not led to decreased U.S. military and economic aid and weapons sales.

Developing and implementing a coherent and effective human rights policy by striking the right balance between legitimate trade or security concerns and human rights, is no easy task. But for most of the last two decades what has passed for policy consistently exhibits a gross imbalance. Human rights issues are dismissed, ignored, disingenuously

deferred, or promised as the eventual outcome of economic liberalisation. The U.S. needs to develop a policy that addresses the major failings of this approach: the selectivity that exempts the foreign policies of allies or strategically important countries from scrutiny or rebuke, and the exceptionalism that demands U.S. exemption from international standards and accountability.

The charge that U.S. is practising cultural imperialism is completely valid because it asserts that human rights are synonymous with American values which the whole world should emulate. In one stroke not only has the U.S. managed to usurp the idea of human rights as its own but it has also isolated itself in such a way that its policies and practices remain above international scrutiny. It is no wonder that it has faced severe criticism from most countries who are aware of the gross human rights violations that the U.S. has indulged in both within its own borders as well as outside. The policymakers have resisted to having any institution not controlled by the U.S., overlooking their shoulder when they contemplate steps such as bombing Iraq's electrical grid system or Hanoi's dikes.

To counter U.S. exceptionalism and the example of impunity it communicates to other countries, Washington should conduct an annual assessment of human rights—not just legislation, but practices—in the United States. The American discourse on human rights should be reframed much more in terms of international standards and less exclusively in terms of "American values." This is essential in any campaign to get the U.S. to ratify the International Covenant on Economic, Social and Cultural Rights. One key objective should be to delink human rights from democratisation and privatisation projects, appreciating areas of linkage but contesting the proposition that they are identical or that elections and stock markets are the necessary and sufficient conditions for human rights progress.

As we make rapid strides towards a borderless world we need to keep in mind that globalization is not an unmixed blessing. It can bring repression and human rights violations and suffering into the open, but it cannot prevent them. It can promote integration among nations, but also lead to disintegration within them. It can bring prosperity on every continent, but still leave many people behind. It can give people the modern tools of the 21st century, but stop the misuse of those tools. Only national governments, working together, can reap the full promise and reduce the problems of the 21st century.

China seems to be pursuing a policy of one step forward two steps backwards in the realm of human rights. The loosening of restrictions on political debate and activism by authorities for much of 1997 and 1998, including toward public calls for political reform and expressions of opposition to government policies, abruptly ended in the fall. The Government continued to commit widespread and well-documented human rights abuses, in violation of internationally accepted norms. These abuses stemmed from the authorities' very limited tolerance of public dissent aimed at the Government, fear of unrest, and the limited scope or inadequate implementation of laws protecting basic freedoms. No amount of posturing on the issue of human rights will get the U.S. anywhere if it fails to project itself as an impartial power or "honest broker". For this to be possible, the U.S. needs to review its past policies and make drastic changes in the way it handles issues. If the U.S. wants to don the mantle of world leadership it has to accept that American national interest is not synonymous with the interest of other countries and act accordingly in an impartial manner. Only a U.S. which is more transparent about its indigenous human rights problem and is able to project a more equitable face to the world can it hope to gain the support of other countries in Asia and elsewhere in its struggle to curb the Asian Dragon.



## CHAPTER 3

### AMERICAN INSENSITIVITY TOWARDS INDIA'S HUMAN RIGHTS ISSUES: A PERSPECTIVE.

#### **Introduction**

Like the United States, the world's largest functioning democracy, India, is firmly committed to the rule of law, free elections as a regulator of the political process, civil liberties, pluralist institutions, and improvement in the quality of life for its people through reform and along evolutionary paths. The Constitution of India – the supreme law of the land – and a large number of other laws, bylaws, rules, regulations, orders, ordinances, policy statements, and election enshrines the human rights available to Indian citizens and others living in India. They reflect most of the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights, and various other international instruments.

Despite many similarities between the two countries with regard to their political and social situations, the Indo-American relationship has been more troubled than tranquil, more competitive than co-operative, more characterised by misconceptions and misunderstandings than accurate and considerate attention to the needs of the other. "Of all the major countries" wrote Professor Stanley Hoffman in 1982, "India is the one whose relations with the United States have been the most baffling. The story since 1947, when India became independent, is one of mutual irritation and missed opportunities".<sup>1</sup> The ambivalence of U.S policy makers toward India has been a product of a number of considerations: strategically, India did not fit into the U.S global policy of promoting containment of the Soviet Union, and it was perceived as being pro-Soviet on

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<sup>1</sup> Stanley Hoffman, "India and the U.S.," New York Times, February 2, 1982.

many international issues, especially those related to the ongoing Cold-War; militarily India had opted for self-reliance rather than dependency on the United States and by buying arms the former USSR offered on very favourable terms, it had consciously chosen to minimise contacts with influential military-industrial elites in the United States; economically, India had not been receptive to U.S multinational corporations or investment, thus impeding the cultivation of closer co-operation in the economic, technological, and industrial sectors; and psychologically, India's sometimes moralistic pronouncements have been a source of disharmony between the two nations.<sup>2</sup> Lastly, highly contradictory impressions of Indian politics, society, economy and foreign policy has dominated the perceptions of the American elite, Perhaps those contradictions reflect nothing more than Joan Robinson's famed observation about India: whatever generalisation you make about it, the opposite is also true.<sup>3</sup>

Reports published in daily newspapers, annual reports of non-governmental organisations like Amnesty International, and the occasional pamphlets brought out by other organisations provide a vivid picture of the human rights situation in India. In India, the Constitution prohibits employment of children below the age of fourteen years and yet the Indian government estimates that there are 17.5 million children working, the International Labour Organization estimates 44 million and Non Governmental Organisations estimates 55 million.<sup>4</sup>

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<sup>2</sup> Norman D. Palmer, The United States and India: The Dimensions of Influence, (Praeger publishers, New York, U.S.A, 1984).

<sup>3</sup> A.P Rana ed., Four Decades of Indo-U.S. Relations: A Commemorative Retrospective, (Har - Anand Publications, New Delhi, 1994), Pg. 168-169.

<sup>4</sup> Jeffrey E. Garter, The Big Ten: The Big Emerging Markets and How They Will Change Our Lives, (Basic Books, U.S.A, 1997), Pg. 89.

To get a clearer picture of the human rights situation in the world, it is necessary to examine the human rights record of the most ardent of human rights supporters, the United States. On December 10, 1998, President Bill Clinton issued an executive order affirming the U.S. commitment to honour its obligations under the international human rights treaties to which it is a party. By doing so, the President raised expectations that the United States would begin to embrace international human rights standards at home, ending the country's long-standing failure to acknowledge human rights law as U.S. law. As 1999 ended, however, little progress stemming from the executive order was apparent. Most public officials remained either ignorant of their human rights obligations or content to ignore them.

As in previous years, serious human rights violations continued to be committed by federal, state, and local officials. The courts, administrative agencies, and legislatures were often unable or unwilling to hold abusers accountable, to provide protection to victims, or to secure the changes needed to bring laws and practice in line with international standards. Among the results of these shortcomings were rampant impunity for brutal police and prison officers; discrimination against ethnic minorities and gay men and lesbians; and the curtailment of internationally recognised rights of asylum-seekers and other immigrants. State-sponsored executions, even of juvenile offenders and the mentally ill, continued at a record pace, while many of the nation's prisons and jails – increasingly populated by racial minorities convicted for non-violent property or drug crimes – continued to be overcrowded, violent places where inmates' basic rights to health, sanitary conditions, and productive activities were frequently ignored and where sexual abuse by male inmates and, in women's prisons, by male guards, was persistent and unchecked by disciplinary measures or prosecution.

In 1999, the U.S. continued to exempt itself from many of its international human rights obligations, particularly where international human rights law granted protections or

redress not available under U.S. law. In ratifying international human rights treaties it typically carved away added protections for those in the U.S. by adding reservations, declarations, and understandings. Amnesty's report entitled 'United States of America: Rights for All',<sup>5</sup> exposes the American hypocrisy in claiming to be a champion of human rights. The report finds: "There is a persistent and widespread pattern of human rights violations in the US. This is not to say that federal, state or local authorities pursue policies deliberately designed to repress particular groups or violate human rights. Rather, it is to recognise that in the wide variety of jurisdictions across the country, practices persist which result in real and serious abuses. Some arise from individual misconduct, encouraged by an institutionalised failure to hold officials accountable. Others result from inadequate systems of control or an outright refusal to recognise or respect international standards for human rights protection. In some cases, economic policies and political trends are creating conditions in which these violations are becoming more widespread and increasingly severe."

The report focuses on several areas where the authorities have failed to prevent repeated violations of basic human rights: the right to freedom from torture and cruel, inhuman or degrading treatment, the right to life and the right to freedom from arbitrary detention. It shows that police officers, prison guards, immigration and other officials in the US are regularly breaching their own laws and guidelines as well as international standards; that the authorities have failed to take necessary action to punish and prevent abuses; and that US government policies and practices frequently ignore or fall short of the minimum standards required by the international community. The chapters on prison conditions and the treatment of asylum-seekers in the report does a thorough job in exposing US's hypocrisy in its lack of respect for human rights internationally:

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<sup>5</sup> Amnesty International Report, "United States of America: Rights for All", 1999.

There are only two countries in the world that have not ratified the Convention on the Rights of the Child – Somalia and the US. India ratified the International Covenant on Civil and Political Rights adopted by the UN General Assembly in 1979. The US did so in 1992 subject, however, to numerous reservations. “The Human Rights Committee, the UN body of experts that monitors states’ compliance with the ICCPR, has stated that recommended that the US consider withdrawing them, in particular those relating to the several of these reservations are incompatible with international law. In 1995 it death penalty and to the right not to be tortured.”<sup>6</sup> It presented its first report to the Committee in 1994, 11 years after India did.

The records are identical in two respects. “The US has not recognised the jurisdiction of the Human Rights Committee and the Committee against Torture to hear individuals’ complaints that their rights have been violated under the ICCPR and the Convention against Torture. Human rights experts appointed by the UN Commission on Human Rights to investigate particular types of human rights abuse have not received full co-operation from the US authorities.” India’s record has been just as bad.<sup>7</sup>

According to the Report, “Thousands of foreign military officers are trained in the US every year and US armed forces conduct training programmes and joint exercises around the globe. The School of the Americas (SOA), located in Fort Benning, Georgia, is the and abroad where foreign officers are trained. A number of SOA ‘alumni’ have been implicated in gross human rights violations. US officials maintain that current trainees are best known US training facility, but it is only one of more than 150 centres in the US vetted to exclude human rights violators and that courses now include human rights training.”

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<sup>6</sup> Ibid

<sup>7</sup> A. G Noorani, “Amnesty and Human Rights in the US”, Economic and Political Weekly, Vol. XXXIV (August 21-28, 1999), pp. 2375-2376.

Under Section 502B of the Foreign Assistance Act, the US is required to cut off all security assistance to any government which 'engages in a consistent pattern of gross violations of internationally recognised human rights' unless the US president deems that there are 'extraordinary circumstances'. However, Section 502B has never been used to cut off such aid. Likewise, the US Congress has never formally blocked a sale proposed by the US executive branch, although a few sales have been delayed, modified or withdrawn.<sup>8</sup>

While successive US governments have used the international human rights standards as a yardstick by which to judge other countries, they have not consistently applied those same standards at home. In some areas international standards offer greater human rights protection than US domestic law, but the US authorities have refused to recognise the primacy of international law.

In India, public awareness of human rights problems is growing. The issue is debated in parliament and the subject of frequent comment in a free press. The courts are now more active in human rights cases. Local human rights groups have continued their important efforts to catalogue and draw attention to human rights abuses throughout India. Government efforts to improve human rights performance include creation of a National Human Rights Commission in 1993 under a statute. At the one year mark the Commission has surprised the sceptics and begun to establish itself as an effective advocate for human rights. During its first year of operation, the NHRC heard nearly 3,000 complaints of human rights abuse and investigated cases in almost every state in India. Reportedly, the Chairman of the Commission has recommended that the Terrorism and Disruptive Activities Act (TADA), which has been subject to widespread abuse, be allowed to lapse. These are positive developments, but more needs to be done. In the

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<sup>8</sup> Ibid

US, also steps have been taken to improve the human rights situation and the violators have been subjected to punishment. For example "as of June 1998, there were 94 independent oversight bodies...with authority to review complaints against the police".<sup>9</sup>

### **American Human Rights Policy Towards India**

Human rights have become a legitimate issue in interstate relations. How a country treats its citizens is no longer a matter for its own exclusive determination. Others can and do legitimately claim a concern. The United States and many European countries increasingly emphasise human rights in their foreign policies. Of course, human rights are not nor likely to become, a primary issue in foreign policies. Human rights as an issue has gained prominence in American foreign policy mostly when it wanted to arm twist a developing country into giving in to the American interest. Historically, the U.S. was influential in drawing up the 1948 Universal Declaration of Human Rights and the two primary international covenants—on political and civil rights (ICCPR) and on economic, social, and cultural rights (ICESCR).

In the years immediately after India's independence there was a cooling of relations between India and the United States. As early as 1949, the U.S. had perceived no significant difference to America's security between a "neutral" India and India under communist bloc control. They thought whether India remained neutral or fell into the Soviet orbit they "might find ourselves denied access to the new raw materials limited industrial capacity, manpower and possible bases of South Asia."<sup>10</sup> Differences between the two countries continued to mar their relations as was evident in 1951 when during the debate on food aid to India in the U.S. Congress, there was great criticism of India's policy of nonalignment.

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<sup>9</sup> Statement by Robin Raphel, Assistant Secretary of State for South Asian Affairs, Before the Senate Foreign Relations Committee on Near Eastern and South Asian Affairs, March 7, 1995.

<sup>10</sup> Ibid 4, Rana, pp. 1-4

It was against this background of the almost negative relationship between the two countries that the relations during the Eisenhower administration developed between the two countries. The differences arising out of the varying perceptions of world problems continued to sour relations though the U.S. was then the major donor of economic and technical help to India.

In late 1947, the dispute over Kashmir flared up into warfare and became internationalised when, in early 1948, India brought the question before the UN Security Council. The issue of Kashmir was a major irritant in the relationship especially after the U.S. formed military alliances like the SEATO and Baghdad Pact with Pakistan. India objected to the U.S. bringing the Cold War into South Asia by concluding a military alliance with Pakistan. The U.S. extended its support to Pakistan whenever the issue of Kashmir was discussed either in the U.N or elsewhere. The general course of Indo-American relations continued to be rather cool and distant.

The U.S. continued to be a country of special concern for India whereas India was usually a country of low priority and interests for the U.S., except when some developments in the subcontinent such as the emergency in India in 1975-1977, threatened to have unpleasant spillover effect in the subcontinent and beyond. The Emergency, when some of the worst abuses of human rights happened in India, can be seen as an excellent example of the impact of changes in the domestic scene on the course of Indo-American relations. During the Emergency, which began from June 26, 1975, the basic freedoms and the Constitution itself were largely suspended, thousands of critics and opponents were arrested, a strict censorship was imposed on the press. When the emergency was proclaimed, President Ford and Secretary of State, Kissinger, instructed U.S. officials to refrain from open criticism of Mrs. Gandhi's emergency rule. According to the New York Times, a major reason for these instructions was "to avoid giving India a



pretext for assigning the U.S. a role in the political crisis.”<sup>11</sup> The Ford administration was widely criticized for taking this position. But it did in fact convey its disapproval in a number of ways: criticized Indian government for expelling American journalists, gave political asylum to the chairman of the Business Council of India, Ram Jethmalani, an open critic of the Emergency. But the U.S. Congress and various media organizations were highly vocal in their criticism. New York Times declared in its editorial in its July 28 issue that “Mrs. Gandhi’s authoritarian rule has subverted the largest democracy and has dishonoured her father and Mahatma Gandhi.”<sup>12</sup>

The year 1977 witnessed important political changes and new directions in both the U.S. and India, which paved the way for significant improvement in Indo-American relations. The Carter presidency was the first to bring the issue of human rights squarely on the American agenda by linking human rights and foreign policy. So when Mrs. Gandhi’s regime was replaced by the more democratic government of the newly formed Janata Party, the U.S. was pleased as well as relieved. Kennedy and former ambassador Patrick Moynihan, were especially vocal in their praise for the resiliency of Indian democracy. The New York Times editorialised that “India has begun to earn a new claim on American sympathies, and perhaps aid. All who love freedom are measurably safer today than before the Indian election and they have an obligation to encourage the spread of the democratic habit.”<sup>13</sup> In 1978, the growing contacts between the U.S. and India were raised to the highest levels during the visit of President Carter to India and the visit of Prime Minister Morarji Desai to the U.S. However, continuing differences over nuclear matters continued.

Though Carter raised the banner of human rights as a foreign policy rhetoric, it was during Reagan and Bush’s presidencies that human rights was incorporated as a tool of

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<sup>11</sup> New York Times, August 9, 1975.

<sup>12</sup> Ibid 5, Palmer, pp. 78-79.

<sup>13</sup> New York Times, March 22, 1977.

Cold War politics. During the Cold War, the Western promotion of human rights was shaped by and deployed as an ideological instrument of the East-West struggle. Reagan and Bush did not dismantle the human rights legislation and bureaucracy created by Carter. They built upon it and focused it more on the anticommunist struggle. At this time, India was highly resentful of the U.S. arms aid to Pakistan and the negative attitude of U.S. over the issue of nuclear fuel shipments to the atomic plant at Tarapur. Selig Harrison, a well-known journalist and scholar with experience on South Asia wrote in the New York Times of July 15, 1980, "...it is becoming increasingly clear that the combined impact of the Administration's overtures to Islamabad and Peking has produced the most dangerous crisis in relations between New Delhi and Washington since India won its independence in 1947."<sup>14</sup>

The vitality of Indian democracy could not overcome the perception of India as a less important nation, especially in comparison with China. The dramatic shift in favour of China, termed as "China Euphoria", by an American scholar because Americans have come to see China as much more important to U.S. interests, have had a negative impact on India. The sense of China's importance is enhanced by the perception that China is outperforming India economically and that it will be more successful in the future.<sup>15</sup> And the hypocrisy of the successive U.S. governments after Carter who espoused the cause of human rights is exposed when even after the brutal repression of the Tiananmen Square incident in China in 1989, President Bush continued to grant Most Favoured Nation status to China. While India has continued to bear the brunt of criticisms against its alleged human rights violations in Kashmir and Punjab as well as the use of child labour in hazardous occupations.

The new political ideology that has taken hold in the West since 1989 insists that only democratic forms of governance are fully legitimate, with 'democracy' being presented as

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<sup>14</sup> New York Times, July 15, 1980.

including a fair measure of human rights. This advocacy of democracy is tied very closely to the endorsement of neo-liberal ideas about state/society relations, especially the reliance on the market to guide economic priorities, the minimisation of the social role of government and the encouragement of maximum privatisation of economic life. This linkage between the market and human rights started influencing world order thinking during the period of Ronald Reagan. Its formulation as 'market-oriented constitutionalism' began to be evident in the final documents of the annual economic summits of the Group of Seven industrialised states (G7). This formulation signalled the ideological break between the mentality of the Cold War and that of the dawning era of globalization.<sup>16</sup>

The end of Cold War and the subsequent collapse of the Communist Bloc has strengthened these perceptions in American foreign policy. But the post-Cold War human rights dialogue between the West and Asia is being influenced by the power structure and dynamics of a more regionalized world, built around United States, Europe and Asia, which is slowly replacing Cold War alliances and super-power competition. After Carter it was Bill Clinton who trumpeted human rights in order to distinguish himself from his predecessors. But the Clinton administration's policy has been much like that of his predecessors: namely, prioritize human rights when competing concerns are insignificant. Traditionally, India has had a turbulent relationship with the U.S because of numerous differences. Trade and security has always been foremost on the agenda. But human rights touch upon extraordinarily delicate matters of culture and values.

#### **President Clinton's India Policy**

India is in a transition from a government-controlled economy to one that is largely market oriented. The private sector is predominant in agriculture, most non-financial

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<sup>15</sup> Richard Falk, "Half Century of Human Rights", Australian Journal of International Affairs, Vol. 52, No. 3 (1998), pp. 255-272.

services, consumer goods manufacturing, and some heavy industry. Economic liberalisation and structural reforms begun in 1991 continue, although momentum has slowed.

Till the end of 1990, India pursued a two-tier foreign policy in respect of human rights. First, it made a distinction between "gross violations" of human rights and other violations. While it advocated international intervention in the case of the former, it invoked the doctrine of domestic jurisdiction in the case of the latter. It regarded racial discrimination, genocide and suppression of the right of self-determination of people under an alien rule as legitimate concerns of the international community, but did not take the same view of the other violations. This policy enabled the Government of India to espouse the cause of the non-White people of South Africa, as also the Palestine cause, at the international level while opposing any move to internationalise other, similar causes. Second, although India supported international measures for the implementation of human rights, it was not inclined to set up any strong machinery for the purpose. In contrast it favoured a step-by-step approach.<sup>16</sup>

Although India is a party to as many as thirteen UN conventions on human rights, there are glaring points of disharmony between the Indian and international standards of human rights. First, at the time of ratifying the International Covenant on Civil and Political Rights, the Government of India made reservations to certain rights and freedoms, such as the right to compensation for human rights violations and the Government is still disinclined to do so.<sup>17</sup> The Government has thus sought to maintain the primacy of Indian Constitutional standards vis-à-vis international standards at the cost of international treaty obligations. Although the concept and the catalogue of human rights have largely changed during the last four decades, the Constitution has been

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<sup>16</sup> Yogesh K. Tyagi, "Human Rights in India: An Overview", *International Studies*, Vol. 29, No. 2, (1992), pp. 200-208.

<sup>17</sup> Ibid.

allowed to retain its almost original form in regard to human rights. The U.N Human Rights Committee, therefore, observed on 27<sup>th</sup> March 1991, that "several provisions of the Armed Forces (Special Powers) Act, the National Security (Amendment) Act, and the Terrorist and Disruptive Activities (Prevention) Act seemed to be incompatible with Articles 6, 9 and 14 of the Covenant".<sup>18</sup>

Secondly, the Government of India has shown marked reluctance in ratifying the following international instruments: (a) Convention against Torture, (b) Convention on the Rights of Migrant Workers; (c) Convention on Marriage; (d) Convention on the Reduction of Statelessness; (e) Convention and protocol relating to the status of Refugees; (f) Optional protocol to the International Covenant on Civil and Political Rights and (g) Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

In addition, out of the 171 conventions of the International Labour Organization (ILO) India is not a party to 140, including the conventions on unemployment, maternity protection, minimum age (sea, non-industrial and agriculture), workmen's compensation (agriculture), night work (bakeries), sickness insurance (industry), and protection against accidents (dockers).

On the whole, however, India has a more elaborate body of law on human rights than any other developing country. Indeed, in this matter, it compares well with any developed country.

Lately the issue of human rights in India has been a matter of discussion not only in bilateral diplomatic parleys between India and several countries, but also in the British Parliament, the U.S Congress, the European Parliament, and several other extraterritorial

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<sup>18</sup> Report of the Human Rights Committee (1991), GAOR, Supp. No. 40 (A/46/40), paragraph 309.

and international forums. The momentous developments in world politics have made a change in the policy of human rights imperative. With the Soviet defeat in the Cold War, the non-visibility of the non-aligned movement in international affairs and the forces of globalization influencing international relations, India is constrained to pursue down-to-earth, defensive foreign policy rather than an idealistic, offensive foreign policy

The Clinton administration took office in the midst of sweeping global transformations. "...While America rebuilds at home, we will not shrink from the challenges nor fail to seize the opportunities of this new world. Together with our friends and allies, we will work together to shape change, lest it engulf us. When our vital interests are challenged or the will and conscience of the international community is defied, we will act with peaceful diplomacy whenever possible, with force when necessary.....But our greatest strength is the power of our ideas, which are still new in many lands. Across the world we see them embraced, and we rejoice. Our hopes, our hearts, our hands are with those on every continent who are building democracy and freedom. Their cause is America's cause."<sup>19</sup> Thus Clinton grandly declared in his inaugural speech in 1993. To his credit, President Clinton established an interagency working group on human rights which was headed by John Shattuck.

John Shattuck, assistant secretary of state for human rights and humanitarian affairs declared in 1994 that the Clinton administration sought to make democracy building and human rights "the main thrust" of his foreign policy actions. "Human rights promotion is equal to (all) other factors" in shaping U.S. bilateral ties with foreign governments," Shattuck told a House Appropriations subcommittee April 21, 1994 and a Senate Appropriations subcommittee April 19, 1994. A clear institutional expression of the administration's "new approach," he said, is the formation of an interagency working

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<sup>19</sup> Inaugural Address of United States President, William J. Clinton, January 23, 1993.

group on democracy and human rights.<sup>20</sup>

Indo – U.S. relations improved with the coming of the Clinton administration though they were not without hiccups. Economic issues, rather than security matters, remained the guiding principle in India's foreign relation with the U.S. In regard to human rights, the major achievement of the Narasimha Rao government was the setting up of the National Human Rights Commission in 1993. The Lok Sabha adopted the Protection of Human rights Bill which provided for the setting up of the National Human Rights Commission (NHRC) which is expected to apply to the actions of the armed forces. Concluding the debate on the bill, Home Minister S. B. Chavan noted that it will foil designs of some countries to malign India at the United Nations and in other international forums.<sup>21</sup>

Shattuck noted that the National Human Rights Commission set up by India two months ago is "a solid achievement" and an indication India is trying to address its human rights problems. The commission is expected to have "reasonably effective" investigatory powers, he said, and "can be an effective method to build a permanent structure to deal with allegations of human rights abuse" in that country.<sup>22</sup> But one issue that has continued to bedevil the Indo – U.S. relations is Kashmir. India always perceived that because of its military alliance with Pakistan, U.S. has consistently favoured Pakistani position on Kashmir over India. It has been on the high priority list of successive US Administrations, and particularly the Clinton dispensation. US Congressman Lee Hamilton, for example, once described the Kashmir issue as the "single most contentious issue disrupting India-US relations."<sup>23</sup>

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20. Assistant Secretary of State, John Shattuck, "Human Rights Called Integral Part of Clinton Foreign Policy." Testifying to a Senate Appropriations Subcommittee, Wireless File (April 21, 1994)

21. The Times of India 1994.

22. Ibid 20.

23. Indian Express, April 30, 1994.

Matters reached an all-time low with certain remarks made by Robin Raphael, the US Assistant Secretary of State for South Asia, in October 1993. Raphael stated that the entire state of Jammu and Kashmir is disputed. In the words of Ms Raphael: "We do not recognise the Instrument of Accession as meaning that Kashmir is an integral part of India...the people of Kashmir have got to be consulted in any kind of final settlement of the Kashmir dispute"<sup>24</sup>. The general picture that emerged was that the US questioned the very accession of Kashmir to India and the situation in Kashmir was even compared to the civil war in Afghanistan. Needless to say, a damage limitation exercise was undertaken by Ms Raphael during her visit to India in March 1994 with the primary objective of removing whatever misunderstandings had been created over her statement. Besides, the differences over the human rights situation in Kashmir continue to be an irritant between the two countries.

There were some who believed that Ms. Raphael's statement reflected the antipathy of the middle-level bureaucracy in the State Department towards India. These statements clearly further strained India-US relations, which India perceived as interference in its internal affairs. Former Indian Foreign Secretary J.N. Dixit opined that never since the Nixon-Kissinger "tilt" of the early Seventies, had India-US relations deteriorated to the extent they did following Ms Raphael's statement. India has so far not accepted any third party mediation to resolve the issue. New Delhi basically considers Kashmir to be a bilateral issue between India and Pakistan that should be resolved within the framework of the Simla Agreement. A good starting point would be for Washington to clearly spell out its stand on the territorial integrity of India. Any attempt to push India into making concessions on Kashmir could only be counter-productive. It will be in the interest of both India and Pakistan and external powers like the US to follow a policy of least provocation and try and build mutual trust. This trend has to be consolidated in the years to come in the interest of

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24. The Times of India, October 30, 1993.



regional and global peace. The US needs to encourage a solution to the Kashmir dispute based on the existing territorial and ground realities. There is need for greater pragmatism on all sides, and a sense of realism has to go into the entire exercise.

Despite Raphael's statement India's relations with the United States have continued to improve, marked particularly by the prime minister's May 1994 visit to Washington, where he addressed a joint session of Congress. Discussion of the human rights situation in Kashmir and elsewhere was apparently kept out of conversations with visiting American cabinet members, Energy Secretary Hazel O'Leary in mid-1994 and February 1995, Defense Secretary William Perry and Commerce Secretary Ron Brown in January 1995, and Treasury Secretary Robert Rubin in April 1995. Particularly at the time of Secretary Brown's visit, this subjected the Clinton administration to severe criticism by human rights activists.<sup>25</sup>

Addressing the 50th session of the U.N. Human Rights Commission, Finance Minister Manmohan Singh sought the support of the international community against the disruptive forces of Pakistan's state-sponsored terrorism. He said that the accession of Kashmir to India not only enjoyed "perfect legal validity" but was also "sanctified by popular will".<sup>26</sup> But the America based Human Rights Watch has continued to blame India for alleged human rights violations by its security forces. It states, "Before 1995, Indian security forces in Kashmir used former militants to carry out killings of suspected militants and others. The December 1992 murder of human rights activist H.N. Wanchoo is believed to have been ordered by Border Security Force (BSF) officer Ashok Patel and carried out by former militants whose release from prison was compensation. Other assassinations in 1993 and 1994 are also suspected to have been the work of hired gunmen, either former militants or mercenaries, working for the security forces. It is only since early 1995 that the

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25. Philip Oldenberg ed., "Introduction: Staying the Course", Asia Society, Country Briefing, (February 1994)

26. Ibid.

security forces have deployed paramilitary outfits to carry out regular patrols and other counterinsurgency operations on a routine basis." <sup>27</sup>

The United States is moving aggressively forward with a new approach to India -- "a successor to the era of missed opportunities, an era of promise realized," remarked Jeffrey E. Garten, Under Secretary of Commerce for International Trade. In testimony before the Senate Foreign Relations Committee Subcommittee on the Near East and South Asia, Garten said, "we find ourselves at a historic moment with regard to India, one in which the impediments of the past may be set aside and the great promise that has been frustrated for so long may finally be realized." The "era of missed opportunities" is over, Garten concluded. "As we head towards the next century, we must devote our efforts to making the U.S.-India partnership something it has never been before -- one that builds on the ties which can bind us, which looks to resolve disputes in a way which benefits each party, and which recognizes the common challenge of improving the lives of our citizens." <sup>28</sup>

The global wave of market-oriented economic reforms present a significant challenge to human rights in the post-Cold War world. The limited success of command economy in India does not mean that one should be blind to the human rights problems created by market economies. At the insistence of the International Monetary Fund and other foreign lenders, India is cautiously moving towards a market-oriented structural adjustment programme. But the liberalization and privatization of the economy has led to cut in social services which are already at an inadequate levels, with dire consequences

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27. Human Rights Watch Report, 1999, India's Secret Army in Kashmir New Patterns of Abuse Emerge in the Conflict, Human Rights Watch, New York.

28. Under Secretary of Commerce, Jeffrey Garten, "'Era of Missed Opportunities' Over Between US, India." before the Senate South Asia subcommittee, Public Diplomacy Query, (March 3 1995).

for living standards. The cost of structural adjustment weigh most heavily on the already marginalised groups in society ie. women, the poor, the elderly and the disadvantaged.<sup>29</sup> There is no guarantee that large numbers of people will not just be left behind. Privatization is likely to result in a grossly unfair distribution of wealth and resources that will undermine the economic and social human rights, so disparaged by the United States.

India's cultural diversity is also facing the threat of homogenization or Americanization of indigenous culture. The media is playing a crucial role in this regard. It is not surprising that there is a backlash from the conservative section of society against this cultural imperialism. There has been the emergence of elites who whip up the nationalistic fervour by propounding extreme nativistic positions and argue for returning to some mythical "golden age" in the dim past. They seek to impose particularistic and narrow notions of culture as "national" culture on what are very heterogeneous populations; they support hierarchical an uniform systems of governance and social order that are essentially as nonparticipatory and undemocratic as the systems being opposed and they do not address fundamental questions of egalitarian internal redistribution. Aggressive, exclusive nationalism challenge the notion of equality that lies at the root of international human rights norm.<sup>30</sup>

To the proponents of globalization, the process creates unprecedented opportunities for advancement of Indian corporates and skilled personnel. But there aren't too many starry-eyed advocate of this phenomenon. Corporate India remains deeply ambivalent. So

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29. Jack Donnelly, International Human Rights: Dilemmas in World Politics, (Westview Press, Colorado, 1993), pp. 155-156.

30. Nikhil Aziz, "The Human Rights Debate in an Era of Globalization: Hegemony of Discourse", Bulletin of Concerned Asian Scholars, Vol. 27, No. 4, (October-December, 1995), pp. 9-23. In India the Hindu right-wing concept of "Hindu" culture is narrowly north-Indian centric, elitist, casteist, misogynist, intolerant, Sanskritic and Brahminic in its vision.

too does the intelligentsia and government. But globalization has given a spurt in activities of human rights NGOs which are rooted in local traditions and allow for maximum participation and democratic decentralization. Indian scholar, Smitu Kothari argues that these movements do not simply empower dominated and oppressed communities but proactively articulate different political visions, and that this diversity of thinking and action is transforming the "traditional" notions of development, democracy, power, and governance. A fundamental critique of modernization and the patterns of development and progress that are encased in that paradigm has arisen as a protest against economic globalization.<sup>31</sup>

During President Clinton's second term in office, beside Kashmir the issue of child labour has gained prominence. America is considering the adding of "social clause", linking trade with human rights. In 1996, Human Rights Watch brought out a report entitled "Small Hands of Slavery" which has slammed the Indian government for lack of implementation of its laws against child labour. It stated, "With credible estimates ranging from 60 to 115 million, India has the largest number of working children in the world. Whether they are sweating in the heat of stone quarries, working in the fields sixteen hours a day, picking rags in city streets, or hidden away as domestic servants, these children endure miserable and difficult lives. They earn little and are abused much. They struggle to make enough to eat and perhaps to help feed their families as well. They do not go to school; more than half of them will never learn the barest skills of literacy. Many of them have been working since the age of four or five, and by the time they reach adulthood they may be irrevocably sick or deformed—they will certainly be exhausted, old men and women by the age of forty, likely to be dead by fifty..... The practice of child debt servitude has been illegal in India since 1933, when the Children (Pledging of Labour) Act was enacted under British rule. Since independence, a plethora of additional protective legislation has been put in place. There are distinct laws governing child labor in

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31. Ibid.

factories, in commercial establishments, on plantations, and in apprenticeships. There are laws governing the use of migrant labor and contract labor. A relatively recent law—the Child Labour (Prohibition and Regulation) Act of 1986—designates a child as “a person who has not completed their fourteenth year of age.” It purports to regulate the hours and conditions of some child workers and to prohibit the use of child labor in certain enumerated hazardous industries. (There is no blanket prohibition on the use of child labor, nor any universal minimum age set for child workers.) Most important of all, for children in servitude, is the Bonded Labour System (Abolition) Act, 1976 which strictly outlaws all forms of debt bondage and forced labor. These extensive legal safeguards mean little, however, without the political will to implement them. In India, this will is sorely lacking. All of the labor laws are routinely flouted, and with virtually no risk of punishment to the offender. Whether due to corruption or indifference—and both are much in evidence—these laws are simply not enforced. In those rare cases where offenders are prosecuted, sentences are limited to negligible fines. Why does India—the Indian government, the ruling elite, the business interests, the populace as a whole—tolerate this slavery in its midst? According to a vast and deeply entrenched set of myths, bonded labor and child labor in India are inevitable. They are caused by poverty. They represent the natural order of things, and it is not possible to change them by force; they must evolve slowly towards eradication. In truth, the Indian government has failed to protect its most vulnerable children. When others have stepped in to try to fill the vacuum and advocate on behalf of those children, India’s leaders and much of its media have attributed nearly all “outside” attempts at action to an ulterior commercial motive. The developed world is not concerned with Indian children, this view holds, but rather with maintaining a competitive lead in the global marketplace. Holding to this defensive stance, some officials have threatened to end all foreign funding of child labor related projects.

This nationalist rhetoric has been largely a diversionary tactic. What the government has hoped to hide is the news that, no matter how the data are analyzed, official efforts to end the

exploitation of child laborers are woefully deficient. Former Prime Minister P. V. Narasimha Rao, for example, made much of his initiative, announced in 1994, to bring two million children out of hazardous employment by the year 2000. Two million represents only 1.7 to 3.3 percent of the nation's child laborers; the fate of the other 58 to 113 million children was not addressed. In a welcome move, the United Front government, elected in May 1996, has promised to eradicate child labor in all occupations and industries, and has stated that the right to free compulsory elementary education should be made a fundamental right and enforced through suitable statutory measures. It remains to be seen what measures the government will take to fulfill these promises. By focusing primarily on child labor in export industries and the threat of sanctions on exports, the international community has sent the unfortunate message that only child labor in export industries must be addressed. In response, the Indian government has accused its international critics of protectionism and has adopted superficial remedies designed to assuage their concerns while continuing to ignore its legal obligation to identify, release and rehabilitate bonded labourers. 1

Multilateral lending institutions have failed in their obligations as well. By neglecting to ensure that the projects they fund do not involve the use of bonded child labor, they have exacerbated the problem of bonded child labor. These institutions, and their funders should take every measure to ensure that aid does not result in child slavery.”<sup>32</sup>

Washington has been at the forefront of the campaign to erect extra-tariff barriers to keep out goods from the “Third World” countries and have been backed by France and trade unions who fear that “cheap” goods from Third World countries would flood the markets leading to unemployment. Thus the developed countries has been tenaciously pursuing the “social clause” stipulation as a basis for international trade. According to

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32. Human Rights Watch, “The Small Hands of Slavery: Bonded Child Labour in India”, Human Rights Watch Publication, May 1996, New York.

the International Labour Organization, "The social clause is not an abstract or fashionable idea. It is about ensuring that working people have their fundamental human rights honoured everywhere. It is about counteracting the ways in which the liberalisation of international trade and investment has undermined the bargaining power of labour and encouraged the exploitation of workers. The rights of workers to basic human rights of the type embodied by the social clause should not depend on a country's wealth, any more than the rights to freedom of speech or freedom of religion. A social clause is not about fixing global minimum wages. No one is arguing that workers' wages and benefits should not vary according to a country's level of income. However, workers have the right to bargain on relatively equal terms for whatever conditions and benefits are appropriate to a given market situation."<sup>33</sup>

Irrespective of what the West may say or feel, child labour is not the consequence of apathy on the part of the parents and the society, it's a direct result of poverty. So children working in factories however hazardous it may be, cannot be rescued unless their economic lot is improved. In an average lower class household, more hands means more mouths to feed but more than that they mean more money.<sup>34</sup> All of the policies that the Indian government has in place are in accordance with the Constitution of India, and all support the eradication of Child Labour. The problem of child labour still remains even though all of these policies are existent. Enforcement is the key aspect that is lacking in the government's efforts. No enforcement data for child labour laws are available: "A glaring sign of neglect of their duties by officials charged with enforcing child labor laws is the failure to collect, maintain, and disseminate accurate statistics regarding enforcement efforts"<sup>35</sup> Although the lack of data does not mean enforcement is non-existent, the number of child labourers and their work participation rates show that enforcement, if existent, is ineffective.

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33. See International Labour Organisation, The Social Clause Issues and Challenges, Geneva, ILO..

34. Ibid 32.

35. Asian Age, May 25, 1999.

An amendment to the US Treasury Act, 1938, mandates that any product made by child labour should not be allowed to be imported into the US. The legislation resulted from effective lobbying from NGOs presenting dramatic, but inaccurate, details of how children were being exploited, particularly in the South Asian carpet industry. Much has been made in the West, and particularly in the US, about child labour in India and other South Asian countries, especially in the carpet-weaving industry. Adding fuel to the fire have been well-meant as well as motivated activities by NGO groups. Much of Third World child labour arises out of situations of abject poverty in which an additional income, however small, is absolutely indispensable for the survival of the family. But the U.S. has turned a blind eye to this fact. In 1999, Deputy Treasury Secretary Stuart Eizenstat, in a speech to his department's advisory committee, said the Clinton administration is intensifying efforts to eliminate the worst abuses of child labor. "This issue is not about sovereignty. It is about the future of the world's children," he said, adding that child labour was deeply embedded in many traditional, cultural and family patterns but "it is not only cruel and immoral, it is also bad economics."<sup>36</sup> Eizenstat said the only way developing countries could move into the global economic mainstream was by developing, not exploiting, their human capital, "and that means education and training from the youngest years through college and beyond."<sup>37</sup>

In fact the U.S. motive in espousing the social clause is suspect especially as America itself also has the practice of child labour in certain sectors. In 1997, the Associated Press found 165 children working illegally in 16 States, from the fields of New Mexico to the sweatshops of New York City.<sup>38</sup> Though the use of child labour certainly needs to be

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36. Hindustan Times, November 23, 1999.

37. Ibid.

38. Hindustan Times, December 14, 1997.



condemned and the stopped, the imposition of sanctions and banning of exports from industries is hardly going to change the situation for the better as poverty is the main cause of child labour. The conditions of poverty that force families to send children out to work is not ameliorated in any way if the developed nations stop aid or loans to the developing countries. So one can only conclude that behind all the rhetoric of human rights lies the real agenda of the West, which is to capture the markets of the developing nations without opening up domestic markets to ensure free trade, in other words protectionism. Recently the Labour Minister in India, Dr. Satyanarayan Jatiya has declared that the government is having a new thinking on the issue of eradicating child labour. Addressing the Conference of Editors on Social Sector issues, Dr. Jatiya said that the government is considering to fix the minimum age of employment as 14 years for all occupations irrespective of whether they are hazardous or non-hazardous. The Subramanian Swamy Commission, therefore, struck a note that the West's advocating of trade sanctions to enforce international compliance with "core labour standards" is not just discordant but also down-right jarring. It is not the welfare of the workers that propels the developed nations to espouse trade sanction but a veiled form of protectionism. The developing nations fear that once the machinery to enforce these standards is erected, the real danger lies in its selective use for illegitimate ends. For eg. If India do not sign the Comprehensive Test Ban Treaty (CTBT), the plight of child labour may be profitably invoked.<sup>39</sup>

The nuclear tests of May 1998 caused a temporary setback to the relationship. The US imposed wide-ranging economic sanctions under the 1994 Nuclear Proliferation Prevention Act (Glenn Amendment) besides terminating all forms of defense cooperation, including IMET. The US has, nonetheless, recognized the need to engage India in an effort to

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39. Nalini Kant Jha, "Promoting Human Rights: President Clinton's Foreign Policy – Dilemma in a Changing International Order", India Quarterly, Vol. 51, No. 4, (1995), pp. 65-77.

address its own concerns and to normalize relations. The Indian foreign policy establishment believes that there has been a "paradigm shift" in the US policy towards India, especially after the imposition of sanctions after Pokhran II. The most dramatic manifestation of this shift has been the support that Washington has given to the Indian position on the Pakistani misadventure in Kargil both individually and in the G-8. Indian officials said that the US support on the Kargil issue has been in evidence at several levels. The various statements that have emanated from Washington on the Kargil issue have made three things very clear: that the US realises that the situation has been created by Pakistan; that India has shown restraint in responding to the Pakistani provocation and that the US is putting pressure on Pakistan to withdraw so that the Lahore process can be renewed.<sup>40</sup>

The recent visit of President Clinton to the Indian sub-continent after a gap of 22 years has also generated a feeling of broad optimism. In deciphering the far reaching implication of this visit there has been speculation that India is emerging to some extent as a factor of significance in the American scheme of things and within its framework of economic interests.

President Clinton addressed the Indian Parliament saying, "...America and India should work more closely together to advance political freedoms and protections against persecution. We should find common ground in opening the global trading system in a way that lifts the lives of rich and poor alike. And we should be able to agree that prosperity and growth in the new economy depend on keeping children in school and protecting the environment. As the largest emitter and one of the fastest-growing emitters of the greenhouse gases that propel global warming, we can improve co-operation for clean energy, so we do not leave a planet in peril. We also can intensify together the

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40. Hindustan Times, June 23, 1999.

struggle against deadly diseases like tuberculosis, malaria and HIV/AIDS.”<sup>41</sup> Clinton denounced the killings of civilians in Kashmir and called for an end to armed hostilities; mutual respect of a UN-established boundary that divides Kashmir; a renewal of talks; and a recognition by both sides that there can be no military solution to the territorial dispute. He also said he would convey that message to Pakistan's military leader, General Pervez Musharraf - the man seen as the architect of Pakistan's apparent escalation of hostilities in Kashmir. The Prime Minister, Mr. Atal Behari Vajpayee, however, asserted that India would not take any decision with regard to its security “under pressure” and said Indo-U.S. relations should be based on “equal terms”.<sup>42</sup>

In the area of human rights India's democracy is found severely wanting, by American journalists and American politicians alike. Human rights (and the closely allied problem of the Kashmir dispute) have indeed been a major irritant in U.S.-India relations, in a period when these two countries have moved closer, based largely on shared economic interests. One can perceive a definite shift in perspective in Indo – U.S. as every year the Burton Amendment, offered by the Republican Congressman from Indiana who is heavily funded by Pakistani and pro-Khalistan elements, suffer a legislative rout. The Burton Amendment seeks to eliminate or greatly reduce American assistance to India on the grounds that India's security forces are guilty of grave human rights violations against minorities that includes extra-judicial executions, torture and that the “guilty” gets away scot free.<sup>43</sup>

The most recent U.S. Department of State annual human rights report on India, released in February 2000, by the Bureau of Democracy, Human Rights, and Labor U.S. Department

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41. The Times of India, March 20, 2000.

42. Hindu, March 20, 2000.

43. The Times of India, July 31, 1999.

of State, provides detailed descriptions of a wide range of human rights problems in India, constitutional and statutory safeguards. Serious human rights abuses included: "There continued to be significant human rights abuses, despite extensive and other extrajudicial killings, including faked encounter killings and deaths of suspects in police custody throughout the country and excessive use of force by security forces combating active insurgencies in Jammu and Kashmir and several north-eastern states; torture and rape by police and other agents of the Government; poor prison conditions; arbitrary arrest and incommunicado detention in Jammu and Kashmir and the north-east; continued detention throughout the country of thousands arrested under special security legislation; lengthy pre-trial detention; prolonged detention while undergoing trial; lengthy delays in trials; occasional limits on freedom of the press and freedom of movement; harassment and arrest of human rights monitors; extensive societal violence against women; legal and societal discrimination against women; female bondage and forced prostitution; child prostitution and infanticide; discrimination against the disabled; serious discrimination and violence against indigenous people and scheduled castes and tribes; widespread inter caste and communal violence; societal violence against Christians and Muslims; widespread exploitation of indentured, bonded, and child labor; and trafficking in women and children.

Many of these abuses are generated by intense social tensions, violent secessionist movements, and the authorities' attempts to repress them, and deficient police methods and training. These problems are acute in Jammu and Kashmir, where judicial tolerance of the Government's heavy-handed anti-militant tactics, the refusal of security forces to obey court orders, and terrorist threats have disrupted the judicial system. The number of insurgency-related killings and acts of torture in Jammu and Kashmir and the north-east by regular security forces showed no clear improvement from the previous year; this also was true in the north-east, despite negotiated cease-fires in the north-east between the Government and insurgent forces and between some tribal groups. Security forces

summarily killed suspected militants and civilians; with few exceptions, they acted with impunity. The concerted campaign of execution-style killings of civilians by Kashmiri militant groups, begun in 1998, continued and included several killings of political leaders and party workers. Separatist militants were responsible for numerous, serious abuses, including extra-judicial executions of members of the armed forces and civilians and other political killings, torture, and brutality. Separatist militants also were responsible for kidnapping and extortion in Jammu and Kashmir and north-east India. The spring and summer incursion of Pakistan-backed armed forces into territory on the Indian side of the line of control around Kargil in the state of Jammu and Kashmir and the Indian military campaign to repel the intrusion resulted in a large number of casualties among combatants on both sides, as well as some civilian deaths and the internal displacement of as many as 50,000 persons.”<sup>44</sup>

But its opening paragraph states forthrightly, "India is a longstanding parliamentary democracy." There are indeed far too many cases of police torture, extrajudicial killings, and injustice even when the courts are reached, but there is very little evidence that these abuses extend much beyond being shameful blemishes on the democratic polity. That a rich variety of organized groups can forcefully challenge the government's policies and actions--and survive and flourish--suggests that human rights violations do not outweigh India's democratic practices. Lately the attacks on religious minorities, especially Christians have gained prominence in the world news. The Human Rights Watch has blamed the BJP government, calling it the "right wing Hindu Nationalist Party" for the attacks. The HRW said, "...While the BJP condemned the murders, India's defense minister claimed that the attack was part of an international conspiracy to defame India, while Home Minister L. K. Advani came to the Bajrang Dal's defense by proclaiming that he "knew" these

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44. Human Rights Watch Report, 1999., New York, Human Rights Watch.

organizations, and that they had "no criminality in them." The Bajrang Dal and related sangh parivar organizations denied any involvement in the killings, though the VHP acknowledged its opposition to conversion activities of Christian missionaries. The president of the Bajrang Dal also alleged that Staines had been engaging in mass conversions rather than social work, and that helping lepers was a mere cover for his proselytizing activities."<sup>45</sup>

### **Concluding Remarks**

India and the United States have many common interests and objectives, but there are also great differences between them. The swings and shifts in India-United States relations have largely been the result of the clash of US global strategic interests, concerns and priorities as opposed to the regional security interests, priorities and concerns of India. On the whole, India has not been high priority area for the United States. It has become so only when developments in the subcontinent have directly affected the global or regional policies and interests of the United States.<sup>49</sup> For example, Pokhran II. To a considerable degree, Washington has viewed relations with India through the prism of global policies, and occasionally of regional policies as well, but seldom from the point of view of bilateral relations. From the perspective of India, the US has subordinated bilateral relations and interests to regional and global considerations, has not accorded sufficient recognition of India's position and importance and views and interests. A former Indian Ambassador to the US termed the relations as "a pattern of misunderstanding, miscalculations and missed opportunities." Dennis Kux has called India and the US "Estranged Democracies." The love-hate syndrome haunts relations between the two countries.

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45. Human Rights Watch Report, 1999, New York, Human Rights Watch.

In spite of the Cold War having come to an end, the basic parameters remain largely unchanged. The battle lines got hardened during the Cold War when the differing world views of the Indians and the Americans came into sharp focus. Both New Delhi and Washington have viewed their national interests vis-à-vis the world at large in divergent ways. These continue, in more ways than one, in the post-Cold War world too. But there has also been perceptible change in the relationship after India embarked on the path of economic liberalisation though in an attenuated form in 1985. In 1991, it was adopted as official policy stance and it has since promoted globalization of Indian capital in all its aspects. American commercial interest has taken predominance in its relation with India. Economic ties have been intensified between the two nations but whether its effect has been uniformly positive for India remains a debatable issue.

One of the main irritants in the Indo-US relations has been the issue of human rights and its violation. Though India has an elaborate and impressive body of law on human rights it coexists with widespread and flagrant violations. But India has also been constrained by terrorist attacks and hostile propaganda on the state of human rights in the contemporary world. The complex issue of cross-border terrorism in Kashmir, Punjab or north-eastern states has been complicated with charges of human rights violations by security personnel. The US has failed to take into account the serious threat that terrorism poses to the unity and integrity of the country. The insensitive attitude to real security concerns of India has led many in India to question the real motive of the US in posturing on human rights. Of course one cannot deny that that the major constraint to Indo-US relations are due to the differing perceptions on security and nuclear issues. India's refusal to sign the Comprehensive Test Ban Treaty in its present form has created divisions in the relationship. Though India's argument that the Treaties are discriminatory in nature are completely legitimate, the US refuses to consider the Indian point of view. The US slapped a slew of sanctions on India and Pakistan after they conducted nuclear tests in May 1998. Though some of the sanctions have been subsequently lifted, the

prejudices colouring the US decisions on the issue has not contributed to the betterment of Indo-US relations.

In the light of the United States's violations of human rights in the non-western world during the Cold War years and earlier, its domestic record of slavery, racial discrimination, near annihilation of its native population and its claim that US record of human rights is beyond the purview of international scrutiny has led the South Asian nations including India to be highly sceptical and critical of the intentions of the United States. Many believe that in the ultimate analysis, it is not human rights that count for the West but the preservation of self-interest and the perpetuation of dominance. Recent attacks on Christian minorities in India has been unduly blown out of proportion by the West without a proper inquiry into the cause or even what action is being taken against the perpetrators of such crimes. Hate crimes against religious minorities in the United States hardly merits such attention from the Western media. The United States proclivity to meddle in the affairs of non-Western states even when they are a relatively transparent democracy has undermined its credibility as a champion of human rights.

Today, the challenge lies in widening the terms of the debate on human rights and globalization which is non-hegemonic in nature. The real gap that exists between Asian and Western perception of human rights needs to be bridged through meaningful dialogue which is possible only when the West can shed its superior attitude and accord equal respect to the voices of the Asian people. While India needs to heed the remedial measures suggested by various groups to improve its human rights records, it should stand firm against the coercive policies of the United States. The opportunity to expand and deepen the bilateral ties between the two nations will come only with the adoption of a constructive political and economic approach.



## CHAPTER 4

### AMERICAN INDIFFERENCE TO MYANMAR'S HUMAN RIGHTS PROBLEM: AN OVERVIEW.

#### **Introduction**

Situated in south-eastern Asia, the Union of Myanmar, formerly known as Burma achieved independence from Great Britain in 1948. Myanmar is a multicultural society of diverse ethnic groups which include the Burmese, Shan, Karen, Rakhine, Chinese and Indians who inhabit the country. According to the government, there are 135 "national races" in Myanmar, which comprise approximately one third of the population. Amid a post Cold War era that has largely embraced democracy and its liberating consequences, Myanmar is a throwback to an earlier, more nakedly brutal period of dictatorial excess.

#### **Background**

Burma's period of constitutionalism, civilian rule and contested elections after independence, is termed as Burma's "democratic era" by contemporary pro-democracy activists. From 1948 to 1958 and from 1960 to 1962, Burma's political system was counted among the more promising young democracies in the post-colonial world. During the period of 1948 to 1962, the Burmese political system was structured by the 1947 Constitution, which included many of the basic provisions associated with democratic rule:<sup>1</sup> Sovereignty was held to "reside in the people"; equality of rights and opportunity was guaranteed for all citizens; subject to the demands of public order and law, citizens

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1. Robert I. Rotberg ed., *Burma: Prospects for a Democratic Future*, (The World Peace Foundation and Harvard Institute for International Development, Cambridge, Massachusetts; Brookings Institution Press, Washington D.C, 1998), pp. 49-50.

were guaranteed liberties of expression, assembly and association; and an independent judiciary was established, including a Supreme Court which would "issue directions in the nature of habeas corpus....".<sup>2</sup> To provide for minority rights, a federal framework was established although the word "federal" has never appeared in the Constitution.<sup>3</sup> A bicameral legislature was established, guaranteeing representation to minority ethnic groups in the Chamber of Nationalities. A variety of solutions for the ethnic minority-dominated regions were enshrined in the Constitution.

National level parliamentary elections were held in 1947, 1951, 1956 and 1960. The first three elections witnessed the victory of the Anti-Fascist People's Freedom League (AFPFL), the former wartime resistance organisation turned political party. In the 1960 election, U Nu's Pyidaungsu (Union) Party won a decisive victory over the military-supported Stable Faction of the collapsed AFPFL. In many ways, the success of the National United Front (NUF) in the 1956 election and the election of U Nu over the military backed candidate in 1960 represented clear steps towards institutionalising a competitive parliamentary system. But many has traced the roots of the present situation in Burma to the 1947 Constitution which embodied a distrust of democracy, emphasising not individual rights and limitations of state intrusions in individual lives but on the empowerment of the state so that the great economic disparities wrought by imperialism could be levelled. For the nationalists, democracy was the system of the colonisers and regaining control over Burma's wealth on behalf of the people of Burma was of paramount importance to Aung San and many of his colleagues.<sup>4</sup>

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2. From "The Constitution of the Union of Burma", Maung Maung, Burma's Constitution, (The Hague, 1961, 2<sup>nd</sup> ed), pp. 285-301.
  3. Josef Silverstein, Burma: Military Rule and the Politics of Stagnation, (Ithaca, 1977), pp. 185-205.
  4. *Ibid.* 1, pp. 52.

But the events of 1962 put paid to the aspirations of the U Nu government. The military, under Gen. Ne Win, effected a coup, seized power, set the democratic constitution aside in favour of a military dictatorship and overlaid the federal system with an administrative network that created a unitary state. Gen. Ne Win feared a break-up of the Union of Burma because the constitution permitted the Shan and Karenni states the right of secession. According to him, following the death of Aung San the AFPFL, under Nu, had departed from the socialist goals of the pre-war nationalist movement and was taking Burma down a capitalist road. The army ruled directly from 1962 to 1971 through the Revolutionary Council and a number of subordinate state and division and township councils dominated by military commanders. After 1971 a nominally civilian regime was created but the style and ethos of a military regime, as well as the leadership, remained largely unchanged. In 1974, it refined its policy by shifting to a political solution – the inclusion of a nominal federal system in a new constitution while leaving real power in the hands of the central government. Till 1988, the Burma Socialist Program Party held a monopoly on power which lasted for 26 years and was dedicated to the creation of a socialist welfare State. When the people could no longer accept military rule and the ideas and values that it sought to impose on the nation, they took to the streets in 1988 and peacefully called for a revival of the political culture and spirit of 1947.

On 10<sup>th</sup> September 1988, that party was forced by widespread anti-government rioting to end that monopoly and to call for multi-party elections. Later that month, the demonstrations for democracy were crushed by military gunfire, said to have killed more than 3,000 persons and to have forced thousands of students to flee the country.<sup>5</sup> At the time of the uprising, a temporary government, the State Law and Order Restoration.

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5. Amnesty International. Burma: the 18<sup>th</sup> September 1988 Military Takeover and its Aftermath, (London:1988), NGO Report in English.

Council (SLORC), consisting of members of the military, was established and continues in force. The military Government or the State Law and Order Restoration Council (SLORC) seized power in September 1988 after harshly suppressing massive pro democracy demonstrations. When the SLORC was formed after the military coup in 1988, all state organs were disbanded, including the judiciary. Demonstrations were banned and a dusk-to-dawn curfew, which was not lifted till 1992, was imposed nation-wide. In addition, several human rights-monitoring organisations like Human Rights Watch, have accused the SLORC of employing forced labour, especially on infrastructure projects; arbitrary detention and torture.

The name of Burma was changed to Myanmar on 18<sup>th</sup> June 1989 by the SLORC. The democratic forces of the National League for Democracy (NLD), which overwhelmingly won the 1990 national election, refuses to accept Myanmar as the name of their country. In December 1997, Burma's leaders dissolved the SLORC and created a new ruling group called the State Peace and Development Council (SPDC), composed of many of the same people.<sup>6</sup>

The regime is headed by armed forces commander General Than Shwe and composed of top military officers. Retired dictator General Ne Win, whose idiosyncratic policies had isolated the country and driven it into deep economic decline, has continued to wield considerable influence. The SLORC permitted a relatively free election in 1990, but it failed to honour the results--which were an overwhelming rejection of military rule--and cede power to the victorious pro-democracy forces. Aung San Suu Kyi's National League For Democracy (NLD) received 82% of the vote in 1990, two years after soldiers gunned down about 3,000 protesting students and Buddhist monks in Rangoon, Mandalay, Sagaing and other cities and towns. The SLORC

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Ibid 1, Rotberg, pp. vii.

placed Suu Kyi under house arrest from 1989 to mid-1995. Throughout the rest of that year and during the last months of 1996, the SLORC also intermittently prevented Aung San Suu Kyi from addressing her followers or meeting openly with the NLD leadership. In January 1997, the SLORC arrested a number of students at the University of Rangoon and the nearby technical institute, including supposed members of Suu Kyi's party.

Conditions for Aung San Suu Kyi and her democratic followers did not improve throughout the rest of 1997. But her difficulties made no discernible mark on the Association of Southeast Asian Nations (ASEAN), which admitted Burma to membership in July.<sup>7</sup>

After the 1990 elections, the SLORC attacked the coalition of winning parties and their leaders through intimidation, detention, and house arrest, and redoubled efforts to consolidate and perpetuate its rule. In 1993 the SLORC established the "National Convention," a body ostensibly tasked with drafting a new constitution. The SLORC carefully hand picked the delegates and stage-managed the constitutional convention's proceedings, ignoring even limited opposition views. Although the National Convention has not been reconvened since 1996, the military government appears determined to draft a constitution that would ensure a dominant role for the military services in the country's future political structure. In August the principal democratic opposition party, the National League for Democracy (NLD), winner of the 1990 election, sought to expedite the transition to democracy by convening a parliament based on the election results. The SPDC responded by detaining 200 opposition NLD Members of Parliament-elect, along with hundreds of other democracy supporters; most remain in detention. There are more than 1,000 political prisoners. This action was taken to pre-empt any challenge to the

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7. Ibid 1, pp. 1-2.

## **Present-day Myanmar: A Bleak Picture**

Human rights and democracy in Burma continue to be a dream, rather than reality. The country is ruled under martial law by a dictatorship, and Burmese citizens do not enjoy freedom of expression, of assembly or due process guarantees. Hundreds of political prisoners remain in prison, and hundreds of more people are arrested every year. Torture and ill treatment of political prisoners is the rule. The authorities continue to persecute minorities, and there are many reports of extra-judicial executions, torture and forced labor and displacement.

According to the U.S State Department 1998 country report on Burma the picture is very bleak. " ....The Government's long-standing severe repression of human rights continued during the year. Citizens continued to live subject at any time and without appeal to the arbitrary and sometimes brutal dictates of the military dictatorship. Citizens do not have the right to change their government. The SPDC has given no sign of a willingness to cede its hold on absolute power. There continue to be credible reports, particularly in ethnic minority-dominated areas, that soldiers committed serious human rights abuses, including extrajudicial killings and rape. Disappearances continued, and members of the security forces beat and otherwise abused detainees. Prison conditions are harsh and life threatening. Arbitrary arrests and detentions for expression of dissenting political views continued with increasing frequency in an effort to intimidate the populace into submission in the face of deepening economic and political instability. More than 1,000 political prisoners remained in government custody, including the approximately 200 parliamentarians elected in 1990 detained since September. Since May 1996, at least 1,000 persons have been arrested, detained, or imprisoned for political reasons. The judiciary is subject to executive influence. During the year, foreign tourists, businessmen and those suspected of or charged with political actions were subjected to increased surveillance, harassment, deportation, and in a few cases imprisonment.

The SPDC maintained and intensified its restrictions on basic rights of free speech, press, assembly, and association. Political party activity remained severely restricted. Although the authorities recognize the NLD as a legal entity, they prevented the party from conducting normal political activities. The Government pressured many party offices throughout the country to close and refused to recognize the legal political status of key NLD party leaders, its General Secretary and 1991 Nobel Laureate, Aung San Suu Kyi, and the two party cochairmen, and it severely constrained their activities through security measures and threats. The regime detained more than 900 Members of Parliament-elect and NLD supporters to prevent the party from convening the parliament that was elected in 1990. It also tightened progressively the restrictions that it imposed in late 1996 on Aung San Suu Kyi's freedom to leave her Rangoon compound and her ability to receive visitors. On four occasions, the SPDC prevented Aung San Suu Kyi from leaving Rangoon, which prompted confrontations that lasted several days. While two of the standoffs were resolved through negotiation, on one occasion security forces forced Aung San Suu Kyi to return to Rangoon. On another occasion Aung San Suu Kyi returned voluntarily, but only after her health had deteriorated dangerously when soldiers blocked her vehicle on a road for nearly 2 weeks to prevent her from peacefully visiting families of her detained supporters.

The Government imposes restrictions on certain religious minorities, and restricts freedom of movement. Thousands of citizens fled army attacks against insurgents, and remained in refugee camps in Thailand at year's end. Societal discrimination and violence against women, trafficking in women and girls, and widespread adult and child prostitution are severe problems. Some discrimination against women, and severe discrimination against religious and ethnic minorities are common. The Government restricts worker rights, bans unions, and uses forced labor for public works and to produce food and other

daily necessities for military garrisons. The forced use of citizens as porters by the army--with attendant mistreatment, illness, and sometimes death--remained a common practice. The Government did not enforce its 1995 military directive and repeated promise to cease the practice of forced civilian labor. Forced civilian labor remains widespread. The pervasive use of forced unpaid civilian labor on major infrastructure projects decreased slightly, as soldiers were used to supplement "contributed" labor by civilians. Child labor is also a problem, stemming from poverty and lack of adequate access to education".<sup>8</sup>

During the SPDC's anti-insurgency operations, members of the military forces were responsible for arbitrary killings, rape, village relocation, the destruction of homes and property, and forced labor inflicted on ethnic minorities. Insurgent forces committed numerous abuses, including killings, rapes, forced labor, the forced use of civilians as porters, and other atrocities.

Despite its large military budget, Burma is among the poorest nations in Asia. The precise depth of Burma's poverty remains veiled, with estimates ranging from \$200 to \$700 annual per capita GDP, but it is a fact that much of its economy is not recorded on official books or is otherwise hidden from direct scrutiny. More than 60% of the world's heroin comes from the poppy fields and refineries of Burma which are smuggled through China, Thailand and the United States. Like narcotics, most of the jade and teak exports remain undeclared.<sup>9</sup> Burma's relation with its neighbours are now more significant politically and economically than ties with Britain, the former colonial power; with Japan, Burma's wartime ruler, and with the United States as a world power. U.S.A, Japan, Australia and the countries of the European Community have only a limited influence on Burma, especially after their failure to stay ASEAN's hand in July 199.

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8. U.S. Department of State 1998 Country Reports on Human Rights Practices, Burma, (Bureau of Democracy, Human Rights and Labor).

9. Ibid 1, pp. 4.



China is extending its support to the repressive regime of the SLORC for the time being. China has armed the Burmese military too.<sup>10</sup>

### **American Policy Regarding Myanmar**

During the Cold War the existence for over 25 years of a military dominated socialist regime in Burma was of little concern to Western governments. Its military weakness and lack of strategic importance to any country other than its immediate neighbours, coupled with its pursuit of autarkic economic policies, which greatly constrained its role in world trade, meant that the developed world was happy to ignore developments in the country now known as Myanmar. Of little geopolitical significance and posing no ideological threat because of its firmly neutralist foreign policy, Burma slipped off the list of major world problems.

The re-emergence of Myanmar as an issue in international conferences after the upheavals in 1988, which culminated in the suppression of large scale urban demonstrations and high casualties, has been underscored not only by its return to the world economy and international affairs, but also by the backwash of the end of the Cold War. Democracy and the violation of human rights in developing countries has returned as an agenda of the Western world with renewed vengeance. While relations with neighbouring countries have improved markedly with the entrance of Myanmar into ASEAN, criticism of the country's record on human rights and democracy has led to a freeze in relations with the United States and most of Europe. But while Western governments have been keen to condemn the regime in Yangon for the sake of their

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10. Ibid 1, pp. 4.

domestic political audiences, they have done little to discourage the desire of the private sector to become involved in the country.<sup>11</sup>

The U.S has pursued a highly normative policy agenda which nonetheless fails to hide three underlying realities. During most of the Cold War period Burma was, from a U.S perspective, geopolitically irrelevant. Its geographic remoteness and self-imposed isolation reinforced this assessment. The events of 1988 and 1990 coupled with the inspirational defiance of Aung San Suu Kyi have thrown the normative issues into high relief. There have been no significant national interest costs to the United States of a policy of principle regarding Burma.

Since 1988, the U.S has regularly condemned the actions of the military regime, has halted all bilateral economic and military assistance, has suspended General System Preference (GSP) and MFN privileges, has opposed lending by international financial institutions to Burma and has tried to rally support for such policies among other countries – including a proposed international embargo on arms shipment to Rangoon. In 1997, the Clinton administration, responding to congressional legislation, barred new U.S investment in Burma while leaving existing investment projects undisturbed.<sup>12</sup>

President Clinton officially declared Burma, as ruled by the SLORC, a pariah state. In April 1997 he prohibited all future American investments there. Several U.S states had previously legislated against purchasing goods from any corporations doing business in Burma, and many apparel makers, soft drink purveyors and others had closed shop in Burma. After President Clinton's ban, only Unocal and Texaco, of prominent U.S based

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11. Robert H. Taylor, "Myanmar: Military Politics and the prospects for Democratisation", *Asian Affairs*, Vol. 85, No. 1, (1998), pp. 3-12.

12. *Ibid* 1, pp. 80-81.

firms, remained active in Burma. President Clinton and Secretary of State Madeline Albright has severely criticized the SLORC for sponsoring as well as profiting from the drug trade out of Burma.<sup>13</sup>

The United States has refused, among other things, to recognize the government's change of the country's name to Myanmar, but it has maintained limited diplomatic and economic ties as well as counter narcotics cooperation with Rangoon. In 1990, Washington withdrew its ambassador from Rangoon, and since then it has opposed Burma's membership in various multilateral financial organizations, refused to approve licenses for the export of military-related items to Burma, and imposed limited economic sanctions on that country (for example, suspending Burma from the U.S. Generalized System of Preferences).

Reflecting the U.S. frustration over the inability to force domestic political changes on Burma, Congress, supported by an impressive bipartisan political movement, launched a legislative assault on Burma. Numerous resolutions, amendments, and bills condemned the military regime in Burma and threatened economic sanctions against it and funding for pro-democracy programs in that country. In 1990 Congress passed the Customs and Trade Act, enabling the president to impose new sanctions against Burma, which President Bush declined to do. In 1993 the Senate passed a resolution calling on President Clinton to work for the immediate release of the Burmese opposition leader Aung San Suu Kyi and for adoption of a United Nations embargo against Burma. President Clinton expressed support for the resolution but did not take any serious steps to implement it. Finally, in the Republican-controlled 104th Congress of 1995-96, both the Senate and the House of Representatives threatened to drop a legislative "nuclear bomb" on Rangoon's military junta. The 1995 Free Burma Act, introduced by Sen. Mitch McConnell (Republican Kentucky) called for the imposition of stiff economic and trade

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13. Ibid 1, pp. 2

sanctions on Burma, as well as on countries that trade with and provide aid to that country (a provision that was later deleted). Similar legislation, the Burma Freedom and Democracy Act, was introduced in January 1996 by Rep. Dana Rohrabacher (Republican California). Mr. Rohrabacher (for himself, Mr. Royace, and Mr. Smith of New Jersey) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committees on Banking and Financial Services, the Judiciary, Commerce, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. Later in 1996 a successful amendment to the fiscal year 1997 Foreign Operations Appropriations Act by Sen. Dianne Feinstein (Democrat - California) and then-senator William Cohen (Republican - Maine), permitted the president to determine if and when to impose sanctions against Burma. The measure provided the administration the diplomatic flexibility to decide whether the SLORC had improved its human rights policy. Secretary of State, Madeleine Albright also championed the cause of sanctions against Burma.<sup>14</sup>

But President Clinton and his top economic and national security advisers dragged its feet in the matter of imposing strict sanctions in Myanmar. It responded to congressional pressure by announcing various reviews of its Burma policy and sending State Department officials to Rangoon. It asserted that some form of diplomatic cooperation with Rangoon on human rights, democratization, and counter narcotics measures could produce positive results, arguing that the SLORC's response to the U.S. approach was "mixed." For example, Aung San Suu Kyi and other political prisoners were released, and Rangoon agreed to cooperate with U.S. counter narcotics efforts, including a survey of opium production.<sup>15</sup>

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14. Leon T. Hadar, "U.S Sanctions Against Burma: A Failure on All Fronts", Trade Policy Analysis, No. 1 (March 26, 1998).

15. "U.S. Policy towards Burma," U.S. Department of State Dispatch 6, no. 30 (July 24, 1995), . electronic version.

But rising political repression by the SLORC and growing congressional pressure on the administration forced President Clinton--following months of public and intra bureaucratic debates-- to decide to move ahead with the Burma sanctions. On May 20, 1997, President Clinton issued Executive Order 13047, banning most new U.S. investment in "economic development of resources in Burma."

To justify the ban, the president cited a "constant and continuing pattern of severe repression" of the democratic opposition by Burma's ruling junta. Clinton said the SLORC had "arrested and detained large numbers of students and opposition supporters, sentenced dozens to long-term imprisonment, and prevented the expression of political views by the democratic opposition." Clinton stressed that under Rangoon's "brutal military regime, Burma remains the world's leading producer of opium and heroin and tolerates drug trafficking and traffickers in defiance of the views of the international community." He added that relations between the Burmese government and the United States would improve only if there was "a program on democratization and respect for human rights."<sup>16</sup> The decision to impose sanctions on Burma was championed by Secretary of State Madeleine Albright.

But this policy of sanctions has come under lot of flak from the business community in America as well as other sections of society. Even though America is singing the praises of globalization through constructive engagements (eg. China) for the rest of the world a different treatment is meted out to Myanmar possibly because of its relative unimportance on the strategic and political map. Results show that the U.S. policy of imposing unilateral trade and investment sanctions against Burma has proven to be a failure on all fronts. By forcing U.S. firms to disengage from Burma, that policy has

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16. Quoted in Steven Erlanger, "Clinton Approves New U.S. Sanctions against Burmese," New York Times, April 22, 1997.

harmed American economic interests and done nothing to improve the living conditions or human rights of the people of Burma.

Since 1990, the U.S. policy of isolating Burma has been rejected by America's trade partners in Asia, who are also Burma's major trade partners. According to America's ASEAN allies, only a dialogue with the regime in Rangoon would lead to political changes in Burma. Without engagement with ASEAN, its members argued, there was a danger that the country would form closer ties with China, a development that would pose a direct strategic threat to Vietnam and an indirect one to the United States. But none of those strategic considerations was enough to dissuade the administration from imposing sanctions.

The other aspect of U.S. policy has been outspoken support for Aung San Suu Kyi and other champions of democracy in Burma. Suu Kyi has supported the imposition of sanctions on Burma in the hope that fear of economic isolation would lead the military regime to change its policies. All internal political parties, including the NLD, welcome the encouragement of the private sector but the NLD says that the time is not appropriate politically for foreign investment. Political reform must precede economic reform, or the present, illegitimate government will be strengthened and will be even more unwilling to bring about political change.<sup>17</sup>

### **Conclusion**

Burma has not traditionally been a top foreign policy concern for Washington, although it does have some limited effect on U.S. economic and strategic interests as well as on counter

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17. Ibid 1, Rotberg, pp. 81.

narcotics policy. (Burma is the world's largest grower of opium). Washington has sought to isolate Burma since the State Law and Order Restoration Council came to power in 1 for Democracy, which had defeated the SLORC in an open election. Burma's ruling junta officially abolished the SLORC in November 1997, only to replace it with the equally repressive State Peace and Development Council.<sup>18</sup>

The current U.S. policy of isolation and sanctions has failed in its objective of promoting human rights and democracy in Burma. The essentially repressive character of the Burmese regime has remained unchanged despite years of pressure. Despite the many adverse effects that globalization is held guilty of, Dorothy Solinger of University of California, Irvine, asserts that economic development in the context of globalization allows for more "entwined" exchanges with other liberal regimes that lead to "more legalistic and rights-conscious states." According to her, an often seen phenomenon is that rights language and democracy come part and parcel with liberal markets and economic development. In this way, globalization can have a positive impact on the break-down of closed, authoritarian systems.<sup>19</sup>

This argument has been forwarded by the members of ASEAN as well as many nations of the European Union in defense of their move to include Myanmar, formerly Burma in their fold. The U.S. policy of isolating Burma has had the perverse effect of strengthening China's hand in the region. As former White House and State Department official Peter Rodman has pointed out, U.S. friends in ASEAN "disagree with the policy of isolating Burma and are eager to bring Burma into their group—to counter the Chinese attempt to

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18. Ibid 14, Hadar.

19. Human Rights Dialogue, Vol. 7, (December 1996). This issue is the report of the Carnegie Council workshop "New Issues in East Asian Human Rights" held at Seoul National University in Korea from October 2-5, 1996.

suborn it as a military ally." America's sanctions on Burma "are thus a great boon to China," suggested Rodman, adding that "the law of unintended consequences is at work here, as in so many other instances where Americans seek moral ends without all that much care as to the practical effects."

It is anticipated that Burma's integration into ASEAN would set her on the path of at least a partial economic recovery. It is expected to accelerate the process of economic growth and provide new opportunities for foreign businesses, although the economy will continue to face major problems. U.S. unilateral sanctions against Burma is predicted to have only a limited effect on that process, since other nations that already have substantial foreign investment in Burma will proceed with that investment. In fact, since a lack of managerial skills seems to be one of the major obstacles to the growth and reform of the Burmese economy, U.S. economic disengagement from that country is preventing Burma's Western-oriented business elite from acquiring the expertise needed to integrate Burma into the global economy. Hence, while Congress and the Clinton administration sing the praises of globalization, their policies toward Burma run contrary to that goal.<sup>20</sup>

Whether the SLORC would successfully continue to rule Burma with an iron hand without any concern for the needs of the people remains a question that has no easy answers. Till now, the SLORC has defended its activities as beyond the appropriate concern of foreigners, who according to them, have had a predilection to interfere in the

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Bertil Lintner, "Paper Tiger," Far Eastern Economic Review, (August 7, 1997).



internal Burmese affair. The SLORC has argued for a redefinition of human rights in a specifically "Myanmar" or Asian context, based on culture and economic standing, to serve its parochial interests. The SLORC has argued that the tatmadaw (armed forces) is the only cohesive force in Burmese society and has accused foreigners including Aung San Suu Kyi of creating divisions.

It seems that solution, insofar as there is one, to the problems facing Burma must be resolved by the Burmese. Of course this does not deny a multifaceted role for foreigners in sponsoring a change in Burmese society. With the people in support of the leaders of the opposition, who are advancing the emerging national culture, the people of Burma, and not the SLORC, may yet find solutions that will be acceptable to all parties concerned.

For the U.S., the alternative to isolation is a policy of limited engagement toward the Burmese regime that would involve sending an ambassador to Yangon, supporting Burmese membership in ASEAN and eschewing barriers to U.S. trade with and private investment in Burma. In certain quarters in the U.S. it is felt that limited engagement would be more of a threat to the SLORC than current U.S. policies.<sup>21</sup>

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Ibid 1, Rotberg, pp. 82.

## CHAPTER 5

### CONCLUSION

A deepening and widening concern for the promotion and protection of human rights, hastened by the self-determinist impulse of a post-colonial era, is now unmistakably woven into the fabric of contemporary world affairs. Substantially responsible for this progressive development has been the work of the United Nations, its allied agencies and many regional organizations. Other factors which has been helpful, particularly since the early 1970s are: the public advocacy of human rights as a key aspect of national foreign policies, made initially legitimate by the example of U.S President Jimmy Carter; the emergence and proliferation of activist non-governmental human rights organizations such as Amnesty International; and a worldwide profusion of courses and materials devoted to the study of human rights both in formal and informal educational settings.

It is imperative that one should not turn a blind eye to the formidable obstacles in the endeavours of human rights policymakers, activists, and scholars. The implementation of international human rights law depends for the most part on the voluntary consent of nations; the mechanism for the observance or enforcement of human rights are yet in their infancy. Nevertheless, it is certain that a palpable concern for the advancement of human rights is here to stay, out of necessity no less than out of idealism. The ideology of human rights is probably the only one which can be combined with such diverse ideologies as communism, social democracy, religion, technocracy and those ideologies which may be described as national and indigenous. The defense of human rights is a clear path towards the unification of people in our turbulent world and a path towards the relief of suffering.<sup>1</sup>

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1. Richard Pierre Claude and Burns H. Weston, ed., Human Rights in the World Community – Issues and Actions (University of Pennsylvania Press, U.S.A 1989), pp. 27-28.

Human rights concerns became a publicized and prominent part of U.S. foreign policy as the result of a movement begun in Congress in 1973 and aided by the presidential campaign of Jimmy Carter in 1976. These concerns have been reflected specifically in U.S. foreign policy in a number of laws and, more recently in many speeches by the president and other officials. Human rights amendments are attached to all the foreign assistance programs of the U.S. The official purpose of the amendments is to use U.S leverage to bring about changes in the policies of rights repressive regimes. But serious doubts have crept in the minds of the Third World governments who are mostly at the receiving end of these sanctions, about the real motivation behind these laws. In spite of its professed commitment to human rights and democracy, a super-power like the United States has since 1945, aided and abetted many more dictatorships than democracies in the non-Western world.

The Cold War era was a paradox with respect to human rights. Although a time of pervasive anti-humanitarian interventions by both super-powers, it was also the period in which human rights first became an established subject of international relations. American foreign policy from 1945 through 1976 increasingly shifted toward the power tradition. American anticommunism progressively became primarily not a moral crusade but a power struggle.

This trend toward almost total concern with power and stability reached its zenith in the Kissinger period of 1969 to 1977. In his memoirs, Kissinger arrogantly justified power politics as moral because, according to him, as employed by the United States it is intended "to preserve the world balance of power for the ultimate safety of all free people." It was against this background of widely perceived power politics that Jimmy Carter rose to prominence, emphasizing ethical values, whether because of personal morality, electoral calculation, or both. Carter caught the American concern for ethic on a

"cyclical upswing".<sup>2</sup> The Carter administration represented itself as returning to the ethical tradition of trying to blend morality with power. At first and partial glance, American foreign policy during the Carter administration seemed to be characterized by active interpretation of the ethical tradition not only in rhetoric but also in reality. For example, the successful effort to repeal the Byrd Amendment which permitted trade with Rhodesia, supported the right of self-determination for Namibia from South Africa and so on. However, a considerable gap between rhetoric and reality remained on certain matters as human rights was inextricably linked with security and economics in American foreign policy. Reagan's preference for a decidedly limited view of human rights became evident when he made clear that he conceived of human rights as a weapon against communism. This confusion of anticommunism with human rights has been strengthened by American Exceptionalism, the belief that the United States is different from and generally superior to most other countries, in large part because of its domestic commitment to individual rights. The interaction of anticommunism and exceptionalism has contributed to an American tendency to denigrate economic and social rights. Only civil and political rights are constitutionally guaranteed in the United States.<sup>3</sup> The consistent use of only weak instruments of foreign policy, such as quiet diplomacy (private discussions with foreign governments), public statements and granting or withholding foreign aid, is clear evidence of the low value placed on human rights by nearly all the presidencies. The policies of President Bush mirrored the tactics adopted by his predecessor President Reagan, to use human rights mainly as a weapon to vilify the communist regime. The task became easier for Bush as the collapse of the Communist regime in the Soviet Union occurred during his tenure.

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2. David P. Forsythé, Human Rights and World Politics (University of Nebraska, 1983), pp. 93.

3. Jack Donnelly, International Human Rights: Dilemmas in World Politics (Westview Press, Colorado, 1993), pp. 100-101.

In truth, Bush combined extravagant vilification of the latest American enemy, Saddam Hussein, with embarrassing docility toward repressive regimes like China because it was perceived to be strategically and economically significant. Even though President Clinton accorded human rights the place of honour in his campaign rhetoric, his subsequent actions have raised serious doubts about the sincerity of his commitment to human rights. Thus, the reorientation of U.S. foreign policy, from support for authoritarian regimes to the promotion of "democratic" political systems in the Third World, has major implications for international relations and restructuring of the global order, and particularly, for North-South relations in the "new world order".

U.S intervention in the "Third World" predated the Cold War and will undoubtedly persist because of strategic, economic, and ideological interests that continue to drive U.S foreign policy. Perceptions of the South Asian countries of China, India and Myanmar have been shaped by American expectations for non-Western peoples. Those expectations reflected an ideology that defined the U.S. role in world affairs in terms of promoting democratic ideals, human rights and the capitalist economic system. Because American ideals were assumed to have universal value, Americans saw their expansion—political, economic, cultural—as a positive, indeed necessary force. The non-industrialized nations were perceived solely in terms of their comparative relationship to the industrialized nations of Europe and North America. But the past fifty years has wrought many changes—subtle as well as dramatic—about American expectations and perceptions of the developing nations.<sup>4</sup>

The end of the Cold War permits and requires the international community to abandon

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4. A.P Rana, ed., Four Decades of Indo-U.S. Relations: A Commemorative Retrospective (Har-Anand Publications, New Delhi, 1994), pp. 168.

the dictators and military leaders that were once the darlings of their Soviet and American patrons, and to encourage human rights and democratic movements. But has that been the case? Rather than join in the difficult work of consolidating and deepening recent progress in the area of human rights, the United States seems content to gloat over "winning the Cold War", bombing Iraq into temporary submission, and praising the virtues of elections and markets.

In 1992, the presidential candidate Clinton vowed to the Democratic National Convention that his administration would "not coddle tyrants, from Baghdad to Beijing". He and other Democrats blasted George Bush's alleged indifference to human rights horrors in Tiananmen Square, Iraq, former Yugoslavia and Haiti. The very fact that a separate bureau of human rights, headed by Edward Shattauck was established in the U.S. State Department, showed the significance attached to this issue in American foreign policy by the administration.<sup>5</sup> Almost two years later, President Clinton had to swallow his rhetoric by breaking the link his administration had established between trade and human rights and extended China's most favored nation (MFN) status, stressing upon "constructive engagement" with China. The President was not up to the task of pressurising a country like China which was economically prosperous, militarily strong, conscious of its own interests and perhaps increasingly nationalistic.<sup>6</sup> The business community in the U.S. would have incurred a huge loss in terms of missed opportunities to capture the markets in China if Clinton had adhered to his campaign rhetoric. This was the single most factor which has undermined his credibility as far as human rights is concerned. Bosnia provided one of the worst examples of human rights violations in recent years. The U.S. knowingly allowed Tehran to supply arms to Bosnian Muslims through Goater to reduce

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5. Nalini Kant Jha, "Promoting Human Rights: President Clinton's Foreign Policy – Dilemma in a Changing International Order", India Quarterly, Vol. 51, (1995), pp. 65-75.

6. Joseph Fewsmith, "America and China: Back from the Brink", Current History, Vol. (September 1994), pp. 250-255.

the possibility of U.S. force being sucked into conflict. It also supplied Pakistan with weapons worth over \$360 million despite recent media reports of Islamabad's Human Rights record in Sindh and Pakistan Occupied Kashmir. This shows the extent to which Washington is indifferent to the end use of weapons it supplies to its cherished allies. Even the domestic record is not without blemishes like resumption of judicial executions, discrimination against indigenous people and police brutality. Events such as these has exposed the essentially rhetorical nature of Clinton's human rights pronouncements.

Owing to its relative unimportance strategically, and having a closed economy, the human rights violations in military dominated Myanmar has largely been ignored. Beyond the routine sanctions which U.S imposes on almost every developing country which it deems to be violating human rights and democratic principles, it has done little else to alleviate the situation. India, on the other hand, had to face a hostile U.S on almost every issue, including human rights. The U.S. has never been sympathetic to India's commitment to follow policies and developmental patterns which would best suit its domestic needs. During the Cold War years, the Non-Aligned Movement, of which India was one of the founding members, had never found favour with the U.S. as it spoiled the hegemonistic designs of the U.S towards the newly independent nations of the Third World. In the post Cold War era, both sides are optimistic of a better understanding between the two largest democracies in the world, especially as India has embarked on the path of liberalizing its economy. The Clinton visit to India this year is being hailed as a precursor to a paradigmatic shift in Indo-U.S. relations. But U.S has been unrelenting in its criticism of alleged human rights abuses in Punjab, Kashmir and the north-east, without taking into account the serious threats posed by cross-border terrorist activities to the security and integrity of the country. The recent nuclear tests conducted by India in May 1998 at Pokhran has led to a set back in Indo-U.S. relations. Though the sanctions have been partially removed in certain sectors, the U.S needs to be more

sensitive to the real security needs of India, considering the fact that Pakistan as well as China are hostile neighbours. The Western attempt to link the practice of human rights in India or China with trade has led to considerable friction. While The American concern for human rights includes child labour in India and prison labour in China, the latter consider such practices as essential for economic development. It is not the welfare of the workers that is of concern to the West, alleges the developing nations, but the cheaper price of goods produced. So trade sanctions are nothing but a veiled form of protectionism. They thus perceive the entire debate concerning "social clause" as fraught with double standards.<sup>7</sup> However, recent reports of the Human Rights Watch and UNDP reports has praised India's commitment to human rights while stressing that there are miles to go before human rights is a reality in practice too.

A new socio-economic phenomenon which is sweeping the world today is globalization, a concept which has been fashionable since about the mid-1980s. The term, globalization, is best suited to describe the ever-intensifying networks of cross-border human interaction. Many scholars have attempted to define globalization from various perspectives. According to noted sociologist Roland Robertson, 'globalisation has been going on for a long time, predating even the rise of capitalism and modernity, but it has accelerated only in the last decade or so because it has moved to the level of consciousness'. Taking into account today's electronic age and revolution in the IT sector, Anthony Giddens has aptly summed it up as, "Globalisation can thus be defined as the intensification of world wide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa".<sup>8</sup> Globalization is a new phase of capitalism which involves a transition to a

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7. Nalini Kant Jha, "Promoting Human Rights: President Clinton's Foreign Policy – Dilemma in a Changing International Order", *India Quarterly*, Vol. 51, (1995), pp. 65-75.

8. Ankie Hoogvelt, *Globalization and the Post-Colonial World – The New Political Economy of Development*, (The John Hopkins University Press, Baltimore, Maryland, 1997), pp. 117, 120.



qualitatively new stage in the world system. The United States is the dominant core nation under whose aegis globalization is unfolding. One aspect of globalization, with which we are more familiar, is the development of a global economy = transnational companies, complex international trading agreements, global markets, the spread of a certain free-market culture to all parts of the world. It is part of a process of progressive integration of the world economy through falling barriers to trade and exchange and greater mobility of capital. But in the last decade or so these forces have got a tremendous impetus from the massive changes in communication and information technology.

As of now, the scope for globalization does not go beyond the markets for products and some services and the market for capital. When it comes to labour, however, the forces of globalization are not allowed free play, and conscious and explicit state intervention prevents the emergence of a global market for labour. There are various reasons for this. Labour is not just a factor of production. It is also the recipient of the economic, political and cultural benefits of being part of a society. Social habits and customs differ, and so does the colour of the skin. It is not easy for any society to overcome age-old prejudices. The most important reason impeding freer movement of labour, however, is the desire on the part of the rich countries to preserve their standard of living which breeds restrictions on immigration.<sup>9</sup>

Human rights is a movement that reflects the growing positive forces of globalization and the desire of all human beings to lead their own lives in freedom and relative peace. So when the world adopts a document like the Universal Declaration of Human Rights and then projects it over these five decades, that's a very powerful legitimizing force.

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9. Manu Shroff, "Globalisation: A Stock Taking", Economic and Political Weekly, Vol. XXXIV, No. 40 (October 2, 1999), pp. 2845-2849.

Though the existence of human rights predates processes of globalization, it has affected the cause of human rights. Whether the effect has been positive or negative remains to be explored more fully. Globalization makes a difference to what obligations in respect to human rights we have in practice, but not in principle as the framework of rights on which one operates need not change. However, globalization may make certain forms of duty appropriate which were not appropriate before. Global communications may make us aware of tragedies to which we can react, but about which we did not know before, and global technologies make distant actions possible or realistic which were not before.<sup>10</sup>

Not all forms of globalization are necessarily favourable to the realization of human rights. The recent Human Development Report of the UNDP gives expression to some of the doubts. Basically, the issue is about equity. The report cites data to show that the benefits of globalization have not spread evenly among the nations and within each country. It has tended to worsen inequalities of income. Newer kinds of inequalities have emerged, e.g., between those who are 'connected' and those who are left out of the web. There is also complaint that cultural invasion from abroad is a threat to the survival of national traditions and values. The fundamental question that arises in this context is whether poorer countries do in fact benefit properly in conventional economic terms or rather lose out in terms of unequal economic power between rich countries and transnational companies and themselves. Also, as other parts of the economies of the so called Third World countries are drawn into the global economy, the very poor, who are often marginalized and impoverished, are made even poorer. They are no longer protected by traditional communal values and networks of support as there is destruction of traditional cultures. The trend of 'homogenization of cultures', the flattening of cultural variations in the face of the pervasive model of economic well-being is detrimental to

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10. Roland Axtmann ed., Globalization and Europe: Theoretical and Empirical Investigations, (London: Printer, 1998), pp. 119.

cultural diversity.<sup>11</sup>

Today, human rights are a force that can undermine the exclusive authority of the state over its nationals and thereby contribute to transform the interstate system and international legal order. But is this uniformly true for all countries? The U.S. government has been notably laggard with respect to formal adherence to the very international legal framework that it invokes against others. It has generally viewed human rights standards as important for the South, but superfluous for the countries of the North, and certainly unnecessary with respect to the internal political life of the U.S. It seems that human rights are conceived as, almost exclusively, an instrument of foreign policy. Many countries in the South, including China, Myanmar and India, has criticized the universality of the international human rights laws. They argue that the promotion of human rights needs to be understood in its primary role as an instrument of renewed intervention by the North in the South. Increasingly, the argument that superpowers have a 'moral duty' to enforce human rights, is used in the same way as the doctrine of the 'civilising mission' once was used to justify colonialism. In effect, current patterns of intervention are allegedly being shaped by the realities of post-colonialism. These realities include the techniques, priorities and dominant ideas associated with the theory and practice of economic globalization, and rely on the pseudo-internationalist identity of the International Monetary Fund (IMF) and other agents of global market forces. Alleging human rights violations has become a useful means for realists to indict foreign adversaries in a manner that generates media attention. In this way, exposing human rights violations often helps to prepare the ground for a later imposition of sanctions and geopolitical recourse to other forms of hostile action.

However, if upholding human rights interferes with important market access and

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11. Roland Axtmann ed., Globalization and Europe: Theoretical and Empirical Investigations, (London: Printer, 1998), pp. 120-121.

investment opportunities, then pressure mounts to overlook human rights abuses of trading partners. Eg. China. On the other hand, the "social clause" debate needs to be viewed in the light of protectionism as it helps obfuscate the role global inequalities play in generating inferior working conditions. In fact, one of the important reasons for low wages in developing countries is the monopolisation of world trade by multinationals and promotion of segmented, low-wage oases by them that ensure the disproportionate outflow of benefits of least developing countries' export to the North.

The ideology of human rights in the West has narrowed it to the point that only civil and political rights are affirmed or individual freedom and democracy are asserted as beneficial, and indeed necessary, to the attainment of economic success via the market. By implication, moves to uphold social and economic rights by direct action are seen as generally dangerous to the maintenance of civil and political rights because of their tendency to consolidate power in the state and to undermine individualism.<sup>12</sup> In advocating the virtues of the operation of unfettered market forces in the developing countries, the U.S. conveniently overlooks the strong control that its government exercises on the economy to minimize the inequity that results from free markets.

Though the main thrust of globalization has been sustainable economic development and the development of the world as a whole into an efficient network of consumers, another aspect of globalization has been the recognition of the impact of human activity on the environment as global in scale, and therefore the need for responses at a global level.

Globalization is a very complex set of processes that operate at multiple levels – political, economic and cultural. In this context, the human rights debate can be analyzed in the

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12. Richard Falk, "A Half Century of Human Rights", Australian Journal of International Affairs, Vol. 52, No. 3 (1998), pp. 255-271.

context of globalization from the basis of Richard Falk's argument that there are two kinds of globalization: 'globalization from above' (GA) and 'globalization from below' (GB).

Political GA is reflected in Western countries, particularly the United States, and global financial institutions pressuring countries in the South to adopt Western style liberal democratic system of governance, multi-party elections at regular intervals, respect for individualistic civil and political rights and so on.<sup>13</sup> A collective confidence that the United States knows better than the rest of the world what human rights are and how they are rank-ordered, has led the government to a growing extent to pontificate, cajole, exhort, and extort through sanctions political actions from countries around the world. It also involves doing everything in their power to crush the resistance of "pariah" nations that dare to be different, such as Iran, Vietnam, Cuba, Nicaragua. Its obvious interest in self-preservation, reflected in its refusal to ratify many U.N Covenants or not letting human rights groups scrutinize its domestic human rights conditions has proved the shallowness of the U.S.'s human rights commitment. Its ethical imperialism coupled with its support for states such as Israel that regularly commit war crimes and violate human rights as defined by Amnesty International and others, have created many enemies. The United States clearly prefers to judge others without risk of reciprocal treatment.<sup>14</sup>

Economic GA entails countries in the South having to accept – within parameters of the dominant world capitalist system – the imposition of the following structural adjustment

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13. Nikhil Aziz, "The Human Rights Debate in an Era of Globalization: Hegemony of Discourse", Bulletin of Concerned Asian Scholars, Vol. 27, No. 4, (October-December 1995), pp. 9-23.

14. John A. Gentry, "The Cancer of Human Rights", The Washington Quarterly, Vol. 22, No. 4 (Autumn 1999), pp. 95-112. In 1998, after initially supporting the formation of a new permanent international war crimes tribunal at The Hague, which would have supranational authority to charge alleged violators of human rights, the U.S. opposed it because it feared that the court would charge U.S. citizens with war crimes. This reflected an obvious interest in self-preservation. Moreover, like other rogue states, the U.S. in recent years regularly flaunted international law when it saw fit.

programmes by the G-7<sup>15</sup> dominated global financial institutions; overwhelming debt burdens; neoliberal economic policies, including the wholesale liberalization of domestic economies to allow unrestricted entry to transnational capital; and Western diktats via multilateral trade agreements such as the General Agreement on Trade and Tariff (GATT), the World Trade Organization (WTO), and North = American Free Trade Agreement (NAFTA).<sup>16</sup> The overall effects of these policies tend toward a further polarization of incomes and living standards within and between countries as well as the rigidification of the international division of labour to the detriment of the Third World.<sup>17</sup>

On a cultural level, GA arises from the control of the global information and communication networks by Western media corporations, and the spread, mainly through this control over means of increasingly modern technologies, of a consumerist culture, and Western cultural expressions, as the global culture. The failure on the part of the Western nations to acknowledge the cultural diversity has led to the relativist argument that Asian values are fundamentally different from the West. Human rights and the Universal Declaration are viewed by many Asian countries, mainly China, Singapore, Malaysia, as a Western construct and as such inconsistent with the beliefs and values of non-Western civilisation which are community oriented and value order and stability

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15. G7 or the Group of Seven leading industrialized countries: the United States, the United Kingdom, Germany, France, Italy, Canada and Japan.

16. Nikhil Aziz, "The Human Rights Debate in an Era of Globalization: Hegemony of Discourse", Bulletin of Concerned Asian Scholars, Vol. 27, No. 4, (October-December 1995), pp. 9-23. Also addressed by Indian scholar Chakravarthi Raghavan in Recolonization: GATT, the Uruguay Round and the Third World (Mapusa, Goa, India: The Other India Book press, 1992) and Martin Khor Kok Peng in "Economic Dimensions of Western Global Domination and its Consequences for the Human Rights of Fifth-sixth of Humanity" (paper presented at the International Conference on Rethinking Human Rights, Kuala Lumpur, Malaysia 6-7 Dec., 1994). Both emphasize the totalitarian nature of the WTO in that not only current but even future Third World governments, even if formed by those elements or parties that consistently opposed GATT and WTO, would be virtually powerless to make the rules and regulations conform to norms of justice and equality.

17. Nikhil Aziz, "The Human Rights Debate in an Era of Globalization: Hegemony of Discourse", Bulletin of Concerned Asian Scholars, Vol. 27, No. 4, (October-December 1995), pp. 9-23. For example, between 1985 and 1990 each year \$40 billion was transferred from the South to the North. This amounts to the poor getting poorer while helping the rich get richer – surely a human rights issue.

above individualistic notion of rights.<sup>18</sup> The homogenization of culture by the West has made authoritarian regimes more intransigent as there has been economic prosperity also. Another fallout of cultural imperialism has been the emergence of elites who propound extreme nativistic positions and argue for returning to some mythical "golden age" in the dim past. They seek to impose particularistic and narrow notions of culture as "national" culture on what are very heterogeneous populations; they support hierarchical and uniform systems of governance and social order that are essentially as nonparticipatory and undemocratic as the systems being opposed and they do not address fundamental questions of egalitarian internal redistribution. The recent emergence of the Hindu right in India is a case in point.

On the other hand, GB is represented in the form of a variety of transnational social movements that have wide-ranging concerns grounded in notions of human community that is itself based on unity in diversity. The globalization of social life has brought with it new social movements and revolutions in civil society around the world, "stirring"

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18. Amartya Sen, "Human Rights and Asian Values", Morgenthau Memorial Lecture at the Carnegie Council on Ethics and International Affairs on May 1, 1997. Sen said that cultural differences and value differences between Asia and the West were stressed by several official delegations at the World Conference on Human Rights in Vienna in 1993. The foreign minister of Singapore warned that "universal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity." The Chinese delegation played a leading role in emphasizing the regional differences, and in making sure that the prescriptive framework adopted in the declarations made room for regional diversity. The Chinese foreign minister even put on record the proposition, apparently applicable in China and elsewhere, that "Individuals must put the states' rights before their own."

But Sen also cautioned against the justification of authoritarianism. He said, "To conclude, the so-called Asian values that are invoked to justify authoritarianism are not especially Asian in any significant sense. Nor is it easy to see how they could be made, by the mere force of rhetoric, into an Asian cause against the West. The people whose rights are being disputed are Asians, and, no matter what the West's guilt may be (there are many skeletons in many closets throughout the world), the rights of Asians can scarcely be compromised on those grounds. The case for liberty and political rights turns ultimately on their basic importance and on their instrumental role. And this case is as strong in Asia as it is elsewhere. .... The recognition of diversity within different cultures is extremely important in the contemporary world, since we are constantly bombarded by oversimple generalizations about "Western civilization," "Asian values," "African cultures," and so on. These unfounded readings of history and civilization are not only intellectually shallow, they also add to the divisiveness of the world in which we live. The authoritarian readings of Asian values that are increasingly championed in some quarters do not survive scrutiny. And the grand dichotomy between Asian values and European values adds little to our understanding, and much to the confounding of the normative basis of freedom and democracy. "

masses of people to rebel against authoritarian arrangements. In many respects, the growth of global civil society was based on human rights activism in civil society that originated in the Western democracies, but gradually spread to all parts of the world. Coming under the category of "new" social movements, their many concerns include the environment, human rights, women's issues, sustainable development, peace and justice, universal literacy and liberation from oppression. The expansion of international NGOs, dedicated to global ideals of many kinds, and the informal networking of millions of individuals through the Internet and global communication has facilitated these movements. At the political level, GB is reflected in the rise and spread of these human rights movements, and particularly through the horizontal transnational solidarity linkages they are forming. The deepening of democracy<sup>19</sup> along with globalization has led to grassroots movements which are spearheading the search for alternative forms of governance that are rooted in local tradition and allow for maximum participation, democratic decentralization and accountability. Their goal is to evolve an alternative approach to development which is more holistic, transcends economism and addresses issues of material, spiritual and cultural well-being of the people.

As a variety of global forces shape the new world order, the issue of human rights is riddled with numerous challenges. The individualistic notion of human rights, as forwarded by the Western nations led by the United States, is being challenged on ideological and practical grounds by voices emanating from the developing nations. The inconsistent and transparently biased human rights policies followed by President Clinton

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19. Nikhil Aziz, "The Human Rights Debate in an Era of Globalization: Hegemony of Discourse", Bulletin of Concerned Asian Scholars, Vol. 27, No. 4, (October-December 1995), pp. 9-23. Sakamoto Yoshikazu argues, "The globalization of democracy (from below) is not a mere geographical expansion of the scope of democracy; nor is it the universalization of the Western, let alone the U.S., type of democracy. It refers rather to the creation of a global perspective and values in the depths of people's hearts and minds, establishing the idea of a global civil society. It is the global dimension of a deepening of democracy to the level of civil society.....In a word, democracy can be deepened only if it is globalized, and it can be deepened only if it is globalized."



has exposed American hypocrisy on this issue. Human rights have become another weapon in the arsenal of Western countries in their efforts to bring recalcitrant Third World nations to heel in their "New World Order". Western nations are increasingly using their very narrow interpretation of human rights as a yardstick with which to judge Third World governments, and in conducting political and economic relations. A glance at the effect of globalization from above is enough to show that far from facilitating equitable distribution of resources or reducing income inequalities, it is impoverishing the developing nations by draining their wealth to the North. The protectionist ploys such as the "social clause" and sanctions employed by the North has had an adverse effect on the poor and undermined the emergence of a level playing field for the South to compete. China's economic clout has helped it to withstand the bullying tactics adopted by the U.S. while retaining its MFN status but India has not been so lucky. Though India is a working democracy, her human rights records have led to sanctions and hindered the allocation of foreign aid. Myanmar being a closed economy has not come in a big way under the human rights microscope of the U.S. In the pursuit of national interest as the foreign policy goal, the Americans has been the cause of human rights violations directly or indirectly without being able to convince any authoritarian regime to adopt rights friendly policies. Until the Americans put their own house in order and allow its domestic policies to be scrutinized by outside agencies it is obvious that no one will take its posturing on human rights seriously. Americans have to realize that globalization is not Americanization and internalize the reality of diversity in all its dimensions. Lastly, it must also recognize that America is not above the same international law by which it seeks to judge other countries with and the main influence on the development of human rights in South Asia will have to come internally.

But human rights is an integral part of the process of globalization from below. The diverse social movements = environmental, peasant, indigenous peoples', womens', and so

on – all over the Third World may be struggling on a whole range of issues, but essentially they are working for human rights and dignity. The scholars from the developing nations are engaged in radical internal critique by using resources internal to their culture. Many Western scholars argue spuriously that the concept of rights is somehow devalued by including economic, social and cultural rights. But human rights are dynamic, not static or else they cannot claim universality.<sup>20</sup> Most of the human rights movements in Asia, Eastern Europe and Latin America demand rights that go beyond the American tradition. They demand entitlements to adequate food, clothing, shelter, health care and education. To argue that these demands on public authorities are not as essential to human dignity and welfare as demands for civil and political rights is to fail to understand and relate to less affluent, less individualistic societies.<sup>21</sup>

If the United States genuinely desires an international environment conducive to human rights, it should become a full participant in international human rights regimes. This will entail struggle with the more parochial and jingoistic elements in the Senate. But to act otherwise is to abandon at the multilateral level democratic allies and moderates in the Third World and to give extraordinary influence to those who would use the language of rights for their own repressive ends. Since human rights are here to stay on the global agenda and since the United States lacks the power, politically, economically and culturally, to force its views unilaterally on most parties, to hold the United States apart from these regimes is to throw away both influence and impact.<sup>22</sup>

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20. Nikhil Aziz, "The Human Rights Debate in an Era of Globalization: Hegemony of Discourse", Bulletin of Concerned Asian Scholars, Vol. 27, No. 4, (October-December 1995), pp. 9-23.

21. See Henry Shue, Basic Rights: Subsistence, Affluence and U.S. Foreign Policy, (Princeton, N.J.: Princeton University Press, 1980); and David P. Forsythe, "Socioeconomic Human Rights: The United Nations, the United States, and Beyond", Human Rights Quarterly, Vol. 4, (Fall 1982), pp. 433-449 on the importance of socioeconomic rights.

22. David P. Forsythe, "Human Rights in the U.S. Foreign Policy: Retrospect and Prospect", Political Science Quarterly, Vol. 105, No. 3, (1990), pp. 435-454.

A search for a new alternative which is broader in scope and genuinely 'pluralistic' and 'universalistic' is underway among many Asian as well as Western scholars which might ultimately be able to release human rights from the confines of Western dominance. Though the U.S. is the harbinger of the new globalizing force politically, economically and culturally it is spreading too rapidly and in too many directions to be controlled by the U.S. So in the post Cold War era, the U.S. faces the challenge of developing a realistic, committed and morally sound international human rights policy that is truly integrated with the aspirations of both the U.S. and the developing nations.

## APPENDIX I

### UNIVERSAL DECLARATION OF HUMAN RIGHTS

*Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.*

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

#### **PREAMBLE**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

**Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**Article 1.**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2.**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3.**

Everyone has the right to life, liberty and security of person.

**Article 4.**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5.**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6.**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7.**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8.**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9.**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10.**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11.**

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12.**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13.**

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14.**

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15.**

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16.**

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17.**

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

**Article 18.**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19.**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20.**

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

**Article 21.**

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22.**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23.**

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24.**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25.**

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26.**

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27.**

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28.**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29.**

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30.**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



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