

## **Challenging Neo-Liberalism in the Present World Order**

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[The paper was presented at the International Human Rights Conference on Human Rights in the 21<sup>st</sup> Century: Changing Dimensions, organized by the Campus Law Centre, University of Delhi, 25<sup>th</sup> -26<sup>th</sup> February 2011.

A shorter version of the paper was published in Human Rights in 21st Century: Changing Dimensions, in Gurdip Singh, V.K. Ahuja (Eds.) Universal Law Publishing Co. (2012). The paper was updated in 2013.]

### *Abstract*

The process of globalisation certainly entails much more than what is commonly spoken of - the globalisation of markets. Over the years, globalisation has acquired a multidimensional flavor and has expanded the organization and exercise of political power. As a direct resultant, across the political field, it evokes a sense that political, social and economic life is affected in ways that we have yet to realise and that we cannot prevent. To illustrate, one of the most captivating facet of globalisation has been the attempt to establish democracy as a universal or global norm. A norm that entitles all people's to establish a government that represents their will. 'Democracy' in a normative context is popularized because of its potential to resolve growing concerns affecting all nations.

Irrespective of such proclamations, this exercise has continuously been opposed or frustrated for being motivated by various economic and political interests. The first and significant impediment to achieving global consensus is that democracy is defined as inseparable from liberal values. The ideal of liberal democracy is not simply a vehicle for holding elections and permitting elected majorities to implement policies. It is also an ideology rooted in market value and individual liberties. Experts suggest that neo-liberalism or neo-globalism provide legitimacy for unfettered capitalism. Neo- Liberals profess that democracy and free market are natural partners in promoting economic development. They propose a model of governance, wherein free markets and economic prosperity will better fulfill the human right objectives of justice, development, welfare etc that all countries seek to achieve. The prefix 'neo' is only a new manifestation of liberal ideals of democracy and governance. In its modern outlook, it expresses individualist moral primacy of the person against claims of any social collectivity. The thrust of liberal values is often spread through the power of ideas. Francis Fukuyama, a policy maker in the US State Department stated in 1989 that free markets and free people are part

of an inseparable project of modernity and progress and represented the end-point of mankind's ideological evolution and final form of human organization. There is no question of a third way. The opinion emphasizes upon the attitude towards expansionist liberalism, which seeks to gain not only victory, but a victory that will be irreversible.

The fact of neo-liberal globalisation certainly undercuts democracies of the developing countries on account of lacking structural conditions. The World Commission on the Social Dimension of Globalization (2004) also confirmed and published a report which argues that the present process of globalization must be changed because in its present form it is undemocratic and particularly disadvantages the poor. The Report states that globalization is occurring in an ethical vacuum which is undermining social cohesion and required growth. It only goes on to prove that although the utility of democratic functioning has continued to make democracy a successful political force, its practice has now made it one of the most dangerous forces. The proposed neo-liberal model furnishes a flawed interpretation to democracy, which otherwise is aspired to be committed the progress of man, in the manner required by his conditions. In response to such developments as well as difficult economic and social experiences, socialism has re-emerged in recent years in some Latin American countries as an opposition to the policies of neo-liberalism. The re-emergence of socialism has been popularly labeled by the President of Venezuela- Hugo Chavez as '21<sup>st</sup> Century Socialism'. The response to neo-liberalism can also be seen in the meetings of the World Social Forum, which is an annual meeting that furnishes a permanent space to build alternatives to neo-liberalism. The Forum is an active platform for the members of the 'After Globalisation Movement', to come together and refine strategies. Such developments certainly pave way for a lot others to stand up and initiate a strong opposition to the motivated trend of globalisation. This is how democracy will be accepted and established as a fundamental norm of social existence and wellbeing. The scrutiny of mere formal politics, in the absence of socio-economic-political considerations would lead to harsh, unequal and undemocratic actions.

**Key Words:** Democracy, Liberalism, Globalisation, Governance, Rights, Reform.

## Main Text:

*We have a new democracy run from far by strong capitalist proprietors influencing the political process and humoring the glitterati and winning parties Right, Left and Centre through a monoculture of globalization, liberalization, marketisation and privatization plus anti-socialism...Herein lies the contradiction between the Constitution and the elections held under the Constitution.<sup>1</sup>*

The process of globalisation certainly entails much more than what is commonly spoken of - the globalisation of markets. Over the years, globalisation has acquired a multidimensional flavor and has expanded the organization and exercise of political power. As a direct resultant, across the political field, it evokes a sense that political, social and economic life is affected in ways that we have yet to realise and that we cannot prevent. Of the many instances, the most captivating facet of globalisation has been the attempt to establish democracy as a universal or global norm. A norm that entitles all people's to establish a government that represents their will. 'Democracy' in a normative context is popularized because of its potential to resolve growing concerns affecting all nations.

Irrespective of such proclamations, this exercise has continuously been opposed or frustrated for being motivated by various economic and political interests. Looking into the wide ambit of 'democracy' it becomes obvious that contemporary issues pertaining to rights, governance and constitutionalism are all within the spectrum of deliberation. For time immemorial democracy has been referred to as the rule of the people, or a form of government in which the 'demos'-the people, rule, with power in the hands of many rather than just a few or one. However, what is open to deliberation is what constitutes 'rule', and the 'people'? "Does talk of the 'people' simply imply some homogeneous will amongst all members of a given community, capable of expression in universally agreed political decisions?"<sup>2</sup> In modern context, how is will of the people expressed? What all authorities hold the legitimate authority to take decisions on the issues of liberty and distribution? What are the mechanisms to question democratic decision making? What standards ascertain the legitimacy of democratic actions? What are the moral and legal standards governing the actions of decisions makers? etc are a few of the many questions that are still open to deliberation. There is only one conclusion so far, that the definition of democracy in terms of elections is a minimal definition.<sup>3</sup> There are a lot many factors that reflect in the functioning of a guided democracy. Any perspective that restricts the understanding of 'democracy' simply to the process of electoral results is certainly a faulty perception, for it leads to no conclusive proof of whether the rule to be established is reflective of the people's will. Under international law, democracy has to satisfy a specific character and objective.

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<sup>1</sup> V.R Krishna Iyer, *Rhetoric versus Reality: Essays on Human Rights, Justice, Democratic Values* 51 (2004).

<sup>2</sup> Jack Lively, *Democracy*, 9 (1975).

<sup>3</sup> Amy L. Chua, "Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development", 108 *Yale Law Journal* 1(1998).

Illustrating on the point, Article 21 to the Universal Declaration of Human Rights (1948) identifies democracy as the government that reflects the will of the people. It states, “The will of the people shall be the basis of the authority of government, and this shall be expressed in periodic and general elections”. The thrust of the provision is simply to highlight the expression of ‘peoples’ to the process of elections. What follows subsequently to such exercise is within the domain of international politics and specific motivations of the international community.

The objective is to highlight the motivations behind establishing democracy as an entitlement or an international legal obligation.<sup>4</sup> At a given point in time, the status of the Constitution and its people comes to be reflected in the face of the democracy. If democracy fails, it is automatically seen as the failure of the Constitution and its people. The task of representing the society has to be realized through the mechanism of democracy. Once that is done it will not be that any such law effectively was chosen only by the actions of any single one of the individuals who formally participate in the process.’<sup>5</sup> Democracy not only has simple normative appeal, it does offer great advantage for the society.<sup>6</sup> The proposition finds support in the words of Amartya Sen, “democracy’s claim to be valuable does not rest on just one particular merit. There is plurality of virtues here, including, first the intrinsic importance of political participation and freedom in human life; second, the intrinsic importance of political incentives in keeping governments responsible and accountable; and third the constructive role of democracy in the formation of values and in the understanding of needs, rights and duties.”<sup>7</sup>

In light of such developments revolving around the ideal of democracy, the first and significant impediment to achieving global consensus is that ‘democracy’ is defined as inseparable from liberal values. The ideal of liberal democracy is not seen simply as a vehicle for holding elections and permitting elected majorities to implement policies. Liberalism stands as an ideology rooted in market value and individual liberties.

## **CONSTRUCTING A NEO-LIBERAL ORDER**

The global inclination towards democracy can be traced back to the time of the Cold War (1945-1991). The War had witnessed the clash between communism and

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<sup>4</sup> Thomas Franck, “The Emerging Right to Democratic Governance”, in Henry Steiner and Philip Alston, *International Human Rights in Context* 900 (2000).

<sup>5</sup> Frank I. Michelman, “The Constitution, Social Rights and Liberal Political Justification”, 1(1) *International Journal of Constitutional Law* 23 (2003).

<sup>6</sup> The expression ‘political democracy’ reflects upon the ‘freedom’ of man. It recognizes the potential of man by recognizing his participation in the electoral process, as well as his participation in upholding the supremacy of the law. In addition, freedom must protect the individual from the arbitrary invasion of the State. The expression ‘social democracy’ reflects upon welfare activity, wherein government responds to its positive obligations of good governance and social benefits. The expression ‘economic democracy’ reflects upon the values of planning and economic governance. The democratic set-up is carefully designed to ensure the mobilization of national resources for the ends of equality and redistribution. Even if private ownership is permitted, the State is obligated to prevent private players from abusing their powers. Finally, the expression ‘international democracy’ has evolved with the increasing exchange and communication between the countries, wherein the world is coming to a consensus on resorting to democracy in order to equip and improve the conditions of all mankind. The international course of communication and co-operation must oppose the practices of rights violation and exploitation.

<sup>7</sup> Amartya Sen, “Democracy as a Universal Value”, 10.3 *Journal of Democracy* 9-17 (1999)

liberalism, which ended with the victory of liberalism. The victory of liberalism reflected the victory of democracy based on liberal values over communist authoritarianism. The liberal ideology since then has come to be popularized and glorified as the only surviving political force after communism.

The term liberalism basically refers to a 'system of thought under which there is deep concern for the freedom of the individual. Liberalism stands in opposition to absolute authority, be it that of the state, or of a political party. The term liberal was popularly expressed to designate a government, a party, a policy, an opinion that favored freedom as opposed to authoritarianism.'<sup>8</sup> After the end of Cold War there have been extensive debates on the increasing impact of liberal ideals in the form of 'liberal democracy'. In context of any democracy, the only alarming concern is the impact of liberalism on national policies and governance. It calls for ascertaining as to how appropriate an understanding of democracy like that proposed, can flourish in a legal system committed to socialism. It is true that the Indian Constitution enumerates the liberal ideals in various forms.

The impact of liberalism as a system of thought received definite expression during the eighteenth century. The 'liberal thought enunciated a few basic principles of government. The three basic principles expressed were, (1) a government cannot be regarded as legitimate unless it is based on the consent of the governed. (2) No power in state may be exercised without responsibility; hence, periodic elections. (3) Revolution is justified whenever a government becomes despotic by violating natural rights or by suppressing elections. In addition, Montesquieu in his theory of separation of powers sought to preserve political freedom. In Montesquieu's view there exists a natural tendency for those in power to abuse their authority; and whatever the form of government, abuse of power is tyranny. And tyranny can be avoided in a system of government in which the executive, legislative, and the judicial powers are distinct and separate. Each power would then check and balance the others.'<sup>9</sup>

In the words of Schapiro, liberalism devised a rational method for settling differences between opposing interests. This method channels conflicts of all kinds- social, economic, religious, racial, and ideological- into political issues to be settled peacefully at polls... Once a conflict becomes a political issue it is evaluated in terms of the public interest. The distinctive liberal concept, the general welfare, takes precedence in public opinion and special interests.<sup>10</sup> Liberalism as an ideology has evolved with the changing times.<sup>11</sup> What we see today is a modern version of

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<sup>8</sup> Salwyn Schapiro, *Liberalism: Its Meaning and History* 9 (1958).

<sup>9</sup> *Id.* at 24.

<sup>10</sup> *Id.* at 90.

<sup>11</sup> In its first stage, 'liberalism or classical liberalism in Britain and France developed policies, ideas and attitudes which harmonized with the class interests of the bourgeoisie, and at the same time advanced greatly the cause of human freedom. In the social order men were free and equal only to the extent that they had equal civil rights. The term economic liberalism or capitalism then was associated with policies concerning economic life. The policies were based on the writings of classical economists David Ricardo and Robert Malthus. The two economists aimed to establish an economy in which the individual would have free scope to develop his energy and talents through freedom of enterprise and freedom of contract. The economic policy was designed to make business proper, which eventually would generate employment, fair price of products and high rents. However, under the economic scheme labour was a commodity, bought and sold like any other commodity in the market. According to Ricardo, what the laborer received was a natural price, a subsistence wage, just enough to maintain him and his family. If he got more, it would be at the expense of profits. That would be bad for the business, as

liberalism, associated with the ideals of free marketism. Liberal democracy is not simply a vehicle for holding elections and permitting elected majorities to implement policies. It is also an 'ideology rooted in market value and individual liberties.'<sup>12</sup> According to a German philosopher Safranski, the neo-globalism approach provides legitimacy for unfettered capitalism.<sup>13</sup> Neo-Liberals are of the opinion, that democracy and free market are natural partners in promoting economic development.<sup>14</sup> The prefix 'neo' is only a new manifestation of liberal ideals of democracy and governance. In its modern outlook, it expresses individualist moral primacy of the person against claims of any social collectivity. In the words of Hobhouse, liberalism is "a belief that society can safely be founded on the self directing power of personality, that it is only on this foundation that the true community can be built. Liberty then becomes not so much a right of the individual, as a necessity of society"<sup>15</sup>.

The contemporary liberal's define the 'liberal ideas' even in the form of a liberal democracy are most appropriately suited in modern times. Francis Fukuyama, a policy maker in the US State Department stated in 1989: "Are we approaching the end of history? Claimed that free markets and free people are part of an inseparable project of modernity and progress and represented the end-point of mankind's ideological evolution and final form of human organization. There is no question of a third way."<sup>16</sup> The opinion emphasizes upon the attitude towards expansionist liberalism, which seeks to gain not only victory, but a victory that will be irreversible. If 'democracy' per se is a mere political force devoid of any value constraints, then why affirm faith in a socialist democracy? It can be said, that a liberal democracy has a priority set up inclined first towards economic gains. From a socialist point of view, the ideas of free market and democracy can not be perceived together. The former gives weightage to profit at all costs with minimal state intervention, while the latter stands for the state legitimacy to promote overall well being.

An ideal agenda is the driving force to achieve a global consensus on redistribution that would involve minimum guarantee of life and livelihood of all men and women. However, contemporary critics of social democracy express that

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from profits came the capital for investments.' The next stage after classical liberalism was that of democratic liberalism or democracy. Democratic liberalism repudiated the classical economic theories and embarked on a policy wherein the state interfered in the economic matters to protect the workers. The widespread discontent amongst the workers was finding expression in the increasing growth of socialism and social reforms. Liberalism soon took the form of social liberalism or what has been known as the welfare state. Social reform were sought to establish economic equality. Salwyn schapiro

<sup>12</sup> Maxwell O. Chibundu, "Political Ideology as a Religion: The Idolatry of Democracy", Available at <http://ssrn.com/abstract=10223718>, 64 (2007).

<sup>13</sup> Eva Nieuwenhuys, *Neo-Liberal Globalism and Social Sustainable Globalization* 17 (2006).

<sup>14</sup> Neo-liberals propose a model of governance, wherein free markets and economic prosperity will better fulfill the human right objectives of justice, development, welfare etc that all countries seek to achieve. However, this model is widely criticized. According to Noam Chomsky, after the end of the Cold War, the US emerged as the super power, and the strategy from then on was to expand its self economic interests. And in that case, "championing the right to democracy, to freedom from the encroaching Communist hordes, was empty rhetoric."

<sup>15</sup> M.R. Masani, "Will Liberalism Survive Socialism" in M.R. Pai (Ed), *Socialism in India: A Commentary* 42 (1967).

<sup>16</sup> P.R. Dubhashi, "Myth and Reality of Capitalism: Neo-Liberalism and Globalisation", 47(1) *Mainstream*, 31 (December 2008).

most of the 'social democratic regimes find themselves at the mercy of the phenomena of globalization, in which case the entire process of technological change, capital mobility, foreign investment, all boils down to the policy of 'mandates' and 'prohibits', deepening the practice of liberalization and privatization. This very strategy is an adaptation of the Washington Consensus, which replaced the initial Keynesian orientation. The Keynesian Revolution refers to a phase of 'Welfare Statism', which was prevalent in 1940's as a response to classical liberalism. The final stage in the evolution of liberalism defined the welfare state with a defined role of the state in the field of social and economic policy. Welfare Statism either was an established fact or a political objective...of large-scale, industrialized societies'<sup>17</sup>. The state is prepared to intervene, through monetary policy, to the extent to achieve full employment, so that the bargaining position of the masses was always stable.<sup>18</sup> On the other hand, the economic model proposing 'a free market policy contemplates that with the adoption of the policy, the economic, political, social and cultural differences would disappear in all countries. The model suggests that states must allow the market to make its own course and all the countries can adhere to a uniform policy that would liberate the international market from national political and social restrictions.'<sup>19</sup> And as societies develop upon this model they become modern and more alike.

One fact of certainty is that that neo-liberal globalization undercuts democracies of the developing countries, on account of lacking structural conditions.<sup>20</sup> The short-term economic revival of industries or market forces can easily undermine the balance of the democratic structures. And experiences in other countries also suggest that. In response to the Asian flu crisis that crippled South Korea, Thailand and Malaysia that were proclaimed as the Asian Dragons, a huge privatization programme had to be adopted at the directions of the World Bank and IMF to get out of the crisis. Several enterprises eventually went into the hands of MNC's to overcome the crisis. The World Commission on the Social Dimension of Globalization (2004) also confirmed and published a report which argues that the present process of globalization must be changed because in its present form it is undemocratic and particularly disadvantages the poor. The Report also states that globalization is occurring in an ethical vacuum which is undermining social cohesion and required growth.<sup>21</sup>

There is a plausible reason to establish that the international character of modern democracy can be very destructive for the nation. The problem is that international law seeks to 'articulate international norms happening elsewhere, away from something called the domestic sphere, and then to construct a model whereby the international norms become part of the domestic sphere...nevertheless, the location

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<sup>17</sup> Upendra Baxi, *Courage, Craft and Contention: The Indian Supreme Court in the Eighties*, N.M Tripathi Pvt. Ltd, Bombay (1985).

<sup>18</sup>Richard Titmuss, "Social Welfare and the Art of Giving", in Erich Fromm (Ed), *Socialist Humanism: An International Symposium* 354 (1964).

<sup>19</sup> Supra note 17 at 65.

<sup>20</sup> Richard Sandbrook, "Making Social Democracy in the Global South", Available at <http://www.republic.gr/en/?p=299>

<sup>21</sup> For an overview of the final report, see "State of the World Forum, Final Report of the Commission on Globalisation". Available at <http://www.commissiononglobalization.org/> (Last visited 15.4.09).

of the norm is always seen as external to the reality, which it seeks to affect.<sup>22</sup> The reference to democracy in isolation from its Constitutional values, socio-political conditions of any country is absolutely a futile exercise of motivated strategies. The specific facet of participation in the political process itself requires a deep insight into what participation means in any specific legal context.

### **GLOBALISATION: THE DANGERS**

The process of globalization has integrated ideas of governance. To benefit from the process of globalization, “it is important for markets to realise that they need a just world order to prevent chaos.”<sup>23</sup> Today most countries have a set of rules embodied in codes formulated by the state and enforced by agencies concerned. These rules create formal legal order. The formation of legal structures directly affects the practical questions on political functioning etc. The process of globalization has expanded the organization and exercise of power. In brief it is creating a platform for dependency.

‘During the 1980’s and 1990’s the World Bank started emphasizing upon and began pushing on the role that the private sector could play in the process of development, through both a sharp increase in the business of its private sector arm- The International Financial Corporation and the establishment of the Multinational Investment Guarantee Agency (MIGA) in 1988. Criticism against the IFC for funding projects that involve multiple violation human rights continues to grow.’<sup>24</sup> The process of expansionist liberalism is widely given a legitimate colour at the hands of the IMF (International Monetary Fund) and the World Bank. The practice and policy of the international financial institutions emerge as authoritarian rules outside the state that must be tested under national democratic and constitutional norms.

There are numerous problems that come to be associated with the financial institutions. Firstly, the imposition of the package of economic reforms of liberalization, privatization and globalization (referred as LPG hereinafter) otherwise known as the structural adjustment programme (referred as SAP hereinafter), is done to establish a free market global economy.<sup>25</sup> The World Bank and the IMF claim ‘that neo-liberal reforms, while a bitter swallow pill, in the end lay the basis for major economic growth and thereafter high living standards.’<sup>26</sup> Secondly, the ‘policy’ based lending is an important part of lending conditions of these institutions. The ‘loans given are said to have generated huge debt traps, the result of which is that enormous portions of national incomes are drained out for the satisfaction of the debts.’<sup>27</sup> The

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<sup>22</sup> Balakrishnan Rajagopal, “The Role of Law in Counter- hegemonic Globalisation and the Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India”, 18 *Leiden Journal of International Law* 346 (2005).

<sup>23</sup> Anthony D’Souza, *World Constitutionalism*, Cambridge Scholars Publishing, United Kingdom (2007).

<sup>24</sup> David Kinley, “Human Rights and the World Bank: Practice, Politics and Law” 365 *The World Bank Legal Review: Law, Equity and Development* (2006).

<sup>25</sup> After the II World War the three institutions were set up for specific purposes like providing investment funds, short term funds etc. The face the institutions completely changed after it adopted the policies of Margaret Thatcher who took over as the Prime Minister of Britain in the early 1980’s. The resultant was, every assistance would have on it attached conditionally in the shape of SAP.

<sup>26</sup> Committee For Workers International, “Smash the IMF and the World Bank! The Bitter Pill that Poisons”, September (2000). Available at <http://socialistworld.net/pubs/imflim01.html> (Last visited 9.4.09).

<sup>27</sup> *Ibid.*

policies, decisions and conditionalities are questionable. These policy conditionalities include: national economic integration into the international economy through liberalization and deregulation, export oriented growth etc.<sup>28</sup> The heart of the matter is that the workings of the institutions are legitimized in the name of financial aid and support for the cause of undertaking measures good for the people of the country. In addition, behind the veil of international awakening there are only a few countries that have achieved the kind of infrastructure that can permit a free market economic discourse. In this regard, P.R. Dubashi exposes the myth of any relation between free market and well being of a nation.<sup>29</sup> The reality is that the big players (Britain and America) that now strategise the promotion of free trade have in the past utilized protectionist policies and subsidies to establish themselves. Its only when they became internationally competitive they sufficiently adopted the free trade mantra.<sup>30</sup>

The current trends without doubt have an adverse impact on national democracy, as well to the idea of a democracy that is sought to be established at the international level. The desire to build a truly global consensus on vital issues will always meet opposition for the reasons stated above. The basic opposition to international democratization comes from the fact that much of the existing structures are not solely dedicated to the cause of democracy, and the norm of democracy may only be constructed to take policy decisions outside the realm of national jurisdiction. The continuance of such endeavors must be legitimately tested, because it is most relevant to first acknowledge the powerful normative and social appeal of democracy as a governing ideal and then utilise it in the resolution of national and international problems.<sup>31</sup>

In 1991, the world witnessed the collapse of the Soviet Union. The impact of such an occurrence also led to noticeable changes in India, which came with the adaptation to the new challenges of globalization that had soon become the national objective.<sup>32</sup> From an agenda for the social, economic and political development, India began marching towards economic growth. It was correctly pointed out that “at a time when doctrines of ‘end of ideology’ and ‘end of history’ are afloat, there has been taken place such a massive change in the global structure of power basically through the power of ideas. And this quite clearly without any powerful or widespread movement from below.”<sup>33</sup>

India as well as other nations began inviting Western investment and aid. In the words of Paul Sigmund, the rationale was basically that economic planning in India did show that nationalization will not assure the rationalized development of the economy that India seeks. The Indian experience seemed to demonstrate that as

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<sup>28</sup> James Gathii, “Neoliberalism, Colonialism and International Governance: Decentering the International Law of Governmental Legitimacy”, 98 *Michigan Law Review* 1999 (2000).

<sup>29</sup> P.R. Dubashi, “Myth and Reality of Capitalism: Neo-Liberalism and Globalisation”, 47(1) *Mainstream*, 31 (December) 2008.

<sup>30</sup> *Ibid.*

<sup>31</sup> For a brief overview of the concept of ‘functional democracy’, see Grainne Burca, “Developing Democracy beyond the State”, 102 *Columbia Journal of International Law* (2008). Also Burt Neuborne, “Making the Law Safe for Democracy: A Review of the Law of Democracy”, 97:1578 *Michigan Law Review* (May 1999).

<sup>32</sup> Raja Mohan, *India’s New Foreign Policy Strategy*. Draft paper submitted presented at a Seminar in Beijing by China Reform and Carnegie Endowment of International Peace, Beijing, May (2006).

<sup>33</sup> Rajni Kothari, “Soviet Developments in Wider Perspective” *Mainstream* 71(Annual 1991).

an economy expands, an entrepreneurial class of investors emerges which can invest and utilize the new surpluses more efficiently than government planners.<sup>34</sup> In 1991, the New Economic Policy (hereinafter NEP) pushed this proposition to another limit. The policy relaxed “many restrictions on private investment, inflow and investment of foreign capital, international trade and foreign exchange.”<sup>35</sup> But the deal of the matter was the inflow of a new age philosophy of free market and capitalism. In response to such developments V.R. Krishna Iyer expressed: “we have a new democracy run from a far be strong capitalist proprietors influencing the political process and humoring the glitterati and winning parties Right, Left and Centre through a monoculture of globalization, liberalization, marketisation and privatization plus anti-socialism...Herein lies the contradiction between the Constitution and the elections held under the Constitution.”<sup>36</sup>

Since then the new age mantra for India has been: “that mankind has entered upon the age of modernity, wherein modernity- is above all the ideal and the fervently held aim of the ‘emerging’ developing areas which, as the acceptable words themselves indicate, now define themselves wholly in terms of the one directional movement toward this higher standard of technical proficiency and material results.”<sup>37</sup> The strongest assertion of the new modernist economic strategy came by way of the Special Economic Zones (hereinafter SEZ). Although the issue itself deserves to be a separately studied and analyzed, it serves as the right example in exposing the evils that modernity may bring in the form of ‘totalitarian tendencies’<sup>38</sup> of the democracy. Many of those exploring the reality of economic globalization have emphasized the negative impact of such trends on the poor citizens and eventually our Constitutional morality.

Also, “a prevailing theme emerging from a key discourse on economic globalization is that the poor in developing countries will inevitably be incapable of mitigating the overbearing forces of globalised capitalism.”<sup>39</sup> It is true that the resort to violence and coercion violates the democratic values, because- the belief and acceptance of basic principles of democratic society and the process of democratic government are to function as the instruments of democratic life... ideologies (that) are incompatible with the democratic way of life reject democracy itself, and the only course of action they accept and follow is force and violence.<sup>40</sup>

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<sup>34</sup> Paul E. Sigmund, *The Ideologies of the Developing Nations* 19 (1964).

<sup>35</sup> Mahendra P. Singh, “Constitutionality of Market Economy”, 18 *Delhi Law Review* 276 (1996).

<sup>36</sup> V.R Krishna Iyer, *Rhetoric versus Reality: Essays on Human Rights, Justice, Democratic Values* 51 (2004).

<sup>37</sup> Gwendolen Carter and John Herz, *Government and Politics in the Twentieth Century*, (1965).

<sup>38</sup> The use of excessive force by the state is totalitarian and undemocratic, the reason being; “it is not an advance in civilization but retrogression. It has been adopted by peoples who are politically and socially immature. They have not grasped the fact that the essential condition for an advanced civilization is tolerance, and that society...of different views...can live together in peace...The achievement of the state involves the use of force.” See Clement R. Attlee, “Democratic Socialism versus Totalitarian Communism and Fascism”, in William Ebenstein, *Modern Political Thought: The Great Issues* 597 (1960).

<sup>39</sup> Jonathan Jones, “India’s Democracy has a Heartbeat”, available at <http://www.indiaseminar.com/semsearch.htm> (2009). (Last visited on 27.3.09.)

<sup>40</sup> T. Mathew, “A Socialist Society Cannot be Democratic”, in M.R. Pai (Ed), *Socialism in India: A Commentary* 72 (1967).

## OPPOSING NEO-LIBERALISM: IDEA TO PRACTICE

There is a possibility of ascertaining a negative impact of a liberal democracy on the rights regime established at the international and domestic level. The relationship between liberal democracy and free market is directly related to the trends of neo-colonialism, wherein rights have been said to have mere recreational value. The chain of colonialism takes the following form: liberal democracy is popularized as the best means to protect human rights, international aid and advice is provided on the condition of incorporating free market values in the national borders, the developing countries are strategically made to submit to the market values of the West without much evidence of improvement within the national borders.

The modern day tactics of neo-colonialism or the economic influence of the West can be explained in Lenin's theory. According to Lenin, capitalism as an economic model suffers a great deal from its association with the evils of colonialism. And in that case, if the prosperity of the advanced nations is grounded on the exploitation of the colonies, then foreign aid, for instance, is not an act of generosity or mutual interest.<sup>41</sup> Even the global obsession with human rights is not a purely value-laden concept for the welfare of all mankind. In 1948 George Kennan of the US State Department made the point clear. He said: "We (the American people) need not deceive ourselves that we can afford the luxury of altruism and world benefaction. We should cease to talk about such vague and unreal objectives as human rights, the raising of living standards and democratization...The less we are then hampered by idealistic slogans, the better."<sup>42</sup>

The colonial feature of financial aids to the developing countries is only reflective of a far more ugly reality than one can imagine. According to Arghiri Emmanuel, 'the phenomenon of development or under-development is not autonomous which can be merely be examined each within its own terms. They are functionally related. The less familiar observation is that the development of the under-developed (referred to as the periphery), is blocked by the very existence of the developed (referred to as the centre). The growth of the centre is reinforced by the resources drawn from the periphery, and infact the centre today is overdeveloped to the very same extent that the periphery is underdeveloped.'<sup>43</sup>

The existence of hard facts makes it difficult to glorify the motivated attempts of propagating democracy as the means to promote human rights and equality among all nations. Apart from the problems associated with the wave of economic colonialism, there are specific hurdles in the workings of democracies today. On the very point Susan Marks makes a significant point on the emerging universal norm of democratic governance.<sup>44</sup> According to Marks, the institutions and procedures of representative democracy are no doubt important, but they are not allowed to exhaust the meaning of democracy. The international law's traditional role towards

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<sup>41</sup> *Supra* note 34 at 14.

<sup>42</sup> Jackson Maogoto, "Democracy's Global Quest: A Noble Crusade Wrapped in Dirty Reality?" Available at <http://ssrn.com/abstract=901218> (Last visited 5.3.09).

<sup>43</sup> Arghiri Emmanuel, "The Socialist Project in a Disintegrated Capitalist World", July 26 (2008). Available at <http://monkeysmashesheaven.wordpress.com/2008/07/26/miws-reprint-the-socialist-project-in-a-disintegrated-capitalist-world-by-arghiri-emmanuel/> (Last visited 4.4.09).

<sup>44</sup> Susan Marks, *The Riddle of all Constitutions: International Law, Democracy, and the Critique of Ideology* 3 (2003).

political systems needs to be re-looked. The concern is that scrutiny of mere formal politics, in the absence of social and cultural considerations would lead to harsh, unequal and undemocratic actions. In a socialist democracy, the blind adherence to the democratic discourse as proposed will inevitably reap unjust consequences.

The dangers of neo-colonialism also embrace an imperialist character. The continued assertion of liberal values is categorically reflective of the superior attitude that the liberal economies hold. Contemporary imperialism has a different connotation, under which the- Empire is a state of affairs even when the imperial power is not formally constituted as such. In saying this, one tacitly takes for granted the existence of political structures properly so described- that is, structures which confront the individual or the small commodity as an external force 'alienated' from the ordinary daily routine of social production...that is to say, one assumes a primary division between state and society, or between political and social life.<sup>45</sup> In response to such developments, socialism has re-emerged in recent years in some Latin American countries as an opposition to the policies of neo-liberalism. In expression of the re-emergence of socialism, the President of Venezuela- Hugo Chavez has coined the term '21<sup>st</sup> Century Socialism'. The experiences in South Africa provide an insight into the people's attachment to their own values. In South Africa, the widespread propagation of liberalism led to the abandonment of the socialist policies by the African National Congress. But from 2005 through to 2007 the country saw widespread opposition and protests by the poor communities. One such mass movement is the Abahlalibase Mjondolo that continues to advocate for popular people's planning despite major police suppression, against the trends of marketisation.<sup>46</sup>

In the wake of clash in ideologies, a more genuine critique has been furnished by Dieterich Steffan, the advisor (informal) to the Bolivian development process under President Chavez. According to Steffan, neither capitalism nor real socialism have managed to solve the urgent problems of humanity, like poverty, hunger, exploitation, and absence of a real participative democracy. Also, both the systems have only contributed to narrow the degree of freedom in the development of both systems, against the will of their protagonists. To remedy these failures, Steffan suggests the construction of a few basic institutions within the new reality of post-capitalist civilization: (1) Equivalence Economy, which should be based on Marxian labour theory of value and which is democratically determined by those who directly create value, instead of market economic principles. (2) 'Basic Democracy' based on democratic state institutions as legitimate representatives of the common interests of the citizens. (3) Majority Democracy, which makes use of plebiscites to decide upon important questions that concern the whole community. In the institutional model proposed by Steffan, the programme of the 21<sup>st</sup> Century Socialism is revolutionary. But revolution must come gradually without resorting to violence.<sup>47</sup>

The response to neo-liberalism can also be seen in the meetings of the World Social Forum, which is an annual meeting that furnishes a permanent space to build alternatives to neo-liberalism. The Forum is an active platform for the members of

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<sup>45</sup> George Lichtheim, *Imperialism* 4 (1970).

<sup>46</sup> Text available at <http://en.wikipedia.org/wiki/Socialism#China> (Last visited 3.4.09).

<sup>47</sup> Text available at [http://en.wikipedia.org/wiki/Socialism\\_of\\_the\\_21st\\_century](http://en.wikipedia.org/wiki/Socialism_of_the_21st_century). (Last Visited 3.4.09).

the 'After Globalisation Movement', to come together and refine strategies. The first meeting was held in 2001 at Brazil. The fourth meeting was held in India (Mumbai) in 2004.<sup>48</sup>

## **ALTERNATIVES TO THE LIBERAL ORDER**

In a legal set up, democracy has always been recognized as the means to the fulfillment of basic rights. This very value of democracy in the international arena has come to raise its status to that of a legitimate entitlement of all people. Although the norm of universality implies that all societies are required to be committed to the value norms of democracy, the concern is that the democratic proposal comprehensively entails a wide range of other values like free marketism. The societies that have undergone revolution and resorted to constitutionalism attach great sanctity to principles of equality, justice and freedom, along with progress and development. A country cannot logically bypass the groundwork of its constitutional imperatives.

In response to the overextension of 'liberal internationalism as the only and universal source of legitimizing authority',<sup>49</sup> there have emerged a plethora of reasons to dispute. In April 2006, a Symposium 'Concerning Global Democracy' witnessed the participation of different countries to promote a global democratic dialogue to discuss and resolve common emerging issues. The opposition to the process of democratization was reflected in the discussion over various issues that exposed the political impediments to achieving global democracy.<sup>50</sup>

There are three ways of responding to the present day process of globalization:<sup>51</sup>

1. One response holds to 'the superiority of the liberal image'. In that case, those that believe in resorting to liberal values, are primarily satisfied with the fact that no other model has upto now, or can benefit mankind.
2. One response recognizes that 'this image is questionable'. Many question the rapid multiplicity in trends to widen the platform of liberalism, because it does not propose a democracy that all countries can relate to.
3. One response opts for 'a radical thinking'. It is true that it is often difficult to oppose strong and strategically justified trends. If 'democracy' as a virtue stands in contradiction to what we have as a legal institutionalized structure, the end product will be chaotic. Under a constitutional framework that survives on the economy along with a multi-dimensional view of humanity, social justice, democracy, and morality, no rigid norms can lead to conclusive results and benefits.

## **CONCLUSION**

It is a known fact that the endeavors of establishing a standard of 'democratic legitimacy'<sup>52</sup> at the international level are currently widely opposed. The opposition

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<sup>48</sup> Text available at [http://en.wikipedia.org/wiki/World\\_Social\\_Forum](http://en.wikipedia.org/wiki/World_Social_Forum) (Last visited 3.4.09).

<sup>49</sup> Supra note 28 at 2002.

<sup>50</sup> Andrew Strauss, "Considering Global Democracy, An Introduction to the Symposium: Envisioning A More Democratic Global System" 13(2) *Widener Law Review* (2007).

<sup>51</sup> Gerard Visser, "The Ambiguity of Globalisation", in Eva Nieuwenhuys, *Neo-Liberal Globalism and Social Sustainable Globalization* 50 (2006).

to ‘the universal norm of democracy can be expressed as an opposition to liberalism, or neo-colonialism, or free marketism. The model of democratization not only has the potential of distorting the realization of rights that states owed to the individuals within the political community, and but has also “been entirely silent about the right of the individual to shape the new fangled universal society.”<sup>53</sup>

The utility of democracy has continued to make democracy a successful political force. However, its practice has now made it one of the most dangerous forces. National democracy has its unique practices and problems, which have been influenced in terms of their economy, policies and actions by the proposed democracy at the global level. The erosion of authority of the state to a great extent occurs when it’s blindly on its way to economic development in conflict with its other functions. Much of the threats come from the sectors that promote modernity. Although the neo-liberal theory regards free market as the most suitable instrument through which to provide for the needs and to strive towards economic growth and market efficiency, the character of “neo-liberalism furnishes a less method of thinking through issues than a series of rehearsed dogmas, unquestioning adherence to which is essential for membership in the community of civilized people’s.”<sup>54</sup>

The multidimensional responsibility of the State towards the people is reduced immensely under the liberal order. For instance, Nieuwenhuys stresses upon the importance and commitment to a multi-dimensional concept of humanity. Under such circumstances, the one-dimensional view of neo-liberal globalism results in the globalization of the economy, but not of wealth, liberty, society, politics, democracy, environmental awareness, culture and morality. Therefore, a social sustainable process of globalization must be built on economic values as well as social, ethical, cultural and ecological values.<sup>55</sup> Any model that proposes democracy in theory as well as in practice, outside the socio-political context in which it is ultimately practiced, will continue to face opposition.

There is no reason whatsoever to adopt a model wherein the emphasis can solely be upon globalization and the opening of the economies credited with economic growth, because- the economy is essentially based on human and social relations. The flawed interpretation to democracy is dangerous for a democracy committed to the progress of man, in the manner required by his conditions.<sup>56</sup>

A similar concern was addressed at the Copenhagen Declaration on Social Development (1995). The Declaration proposed a ‘rights’ strategy to development, which “ assumes that human rights norms that require and support democracy would provide the basis of political and social stability, and that social and economic

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<sup>52</sup> Susan Marks, *The Riddle of all Constitutions: International Law, Democracy, and the Critique of Ideology* 3 (2003).

<sup>53</sup> Jackson Maogoto, “Democratic Governance: An Emerging Customary Norm?” Available at <http://ssrn.com/abstract=1043521,143> (Lat visited 5.03.09).

<sup>54</sup> *Ibid.*

<sup>55</sup> *Supra* note 13 at 7.

<sup>56</sup> Emphasizing upon this very proposition, while accepting the Nobel Peace Prize in 2001 for *Democracy as an International Issue*, Kofi Annan stated; “the lesson of the past history has been that where the dignity of the individual has been trampled or threatened, where citizens have not enjoyed the basic right to choose their government or the right to change it regularly, conflict has too often followed, with innocent civilians paying the price in lives cut short and communities destroyed.” See *Supra* note 53 at 147.

rights would eliminate the worst consequences of poverty.”<sup>57</sup> However, the very concept of ‘rights’ is the ideal form of building a constructive criticism of the mode of building a path to development. Eventually, the value of a democracy begins and ends with the satisfaction of human needs, because- beyond their material wants, men need a belief in the meaningfulness of their lives, a faith in some higher cause to which they as individuals as well as the groups to which they belong can be devoted.<sup>58</sup> The trends that furnish the ‘derivation of rights through philosophical arguments seem unlikely to capture the ways in which the non-ideal society develops and understands its commitments.’<sup>59</sup>

In order to restore the virtues of democracy, the States committed to the cause of humanity must exercise their will and reason to oppose and question the motivated trends of globalisation associated with neo-liberalism. In the present world order, ‘the right to oppose’ is the most authoritative weapon in the hands of the international community as well as the States independently. It is a right that continues to satisfactorily keep the world order just and beneficial to all mankind.

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<sup>57</sup> Yash Ghai, “ Human Rights and Social Development: Towards Democratization and Social Justice” Available at [http://www.unrisd.org/unrisd/website/document.nsf/\(httpPapersForProgrammeArea\)/ECD0417EB1177C5280256B5E004BCAFA?OpenDocument](http://www.unrisd.org/unrisd/website/document.nsf/(httpPapersForProgrammeArea)/ECD0417EB1177C5280256B5E004BCAFA?OpenDocument)

<sup>58</sup> Gwendolen Carter and John H. Herz, *Government and Politics in the Twentieth Century*, 176 (1965).

<sup>59</sup> Goodwin Liu, “Rethinking Constitutional Welfare Rights”, 61 *Stanford Law Review* 209 (2008).

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