

GLOBALISATION AND THE FUTURE OF HUMAN RIGHTS *

*Upendra Baxi**

I

The area that I'm going to talk about is this booming, buzzing word, the buzz word, the "G word", Globalisation. Everybody uses this word exuberantly, not just do we use this word exuberantly, all of us remain heavily judgemental in relation to whatever we want to mean by globalisation. I suspect however that most sections of the globalised middle class which a cross-section of us here represent, have with great respect already been brain washed into thinking that the word "G" in globalisation stands for "good". We've now the authority of a distinguished Nobel laureate Amartya Sen, who addressed us through the columns of *Los Angeles Times* in *Times of India* the other day and endorsed it as good idea.. I have a less benign view of globalisation.

I do not think that the question is not what is or is not globalisation, but how we may choose to describe globalisation. How we may trace its geneology as it were. How do we trace its archaeologies, origins in discourse. How may we describe its various itineraries as it were and how may we foresee and foretell the impact of globalisation in the shaping of collective human futures. I think of necessity when we talk of globalisation. We are situated within globalisation, and not outside, in another period. Therefore, it was unnecessary for Amartya Sen to begin his article by saying, the protestors against IMF and World Bank and Seattle and Washington, their protests themselves is an evidence of globalisation. What Professor Sen overlooks is that we cannot take position in space and time which is not our own. We are living in a globalised world, whatever you want to mean by globalisation. To protest against globalised world is to protest from within it. The great German philosopher Heidegger used to say, that the most important problem when confronted with a vicious circle is not how to get out of it because you can't get out of it. Otherwise, it is not vicious circle. The most important thing about a vicious circle is to how to stay close to its heart and that's what we must do when we look at the notions of globalisation. I'm sorry to have mentioned Heidegger because it turned out later on that he was a rather heavy supporter of the Third Reich. Anyway, this is not the occasion to value or to analyse him but what he said about staying closer to the heart of vicious circle makes a lot of sense.

* *Professor of Law, University of Warwick Coventry, U.K. Formerly Vice Chancellor and Professor of Law University of Delhi, Delhi.*

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II

There are three kinds of people who talk about globalization, or there are three ways of talking about globalisation. The first kind are the: “nothing new wallahs and wallis”(literally folks). These folks say there is nothing new about globalisation. It has always been there with us. Since the Greeks and Romans people have been in varied kinds of communication, trade, commerce, culture, banking and credit transactions; you name it, and you have it. So these people say, as Amartya Sen says, in the *Times* article, there is nothing new about globalisation. Globalisation has always been with us. State and governance throughout the centuries have been heavily internationalised. Well from the peace of Westphalia onwards, states, sovereignties stand interpenetrated by regional and even global powers. The “nothing new” folks “tell you that it is the same old story. It is the very same old plot. The very same order of bathos and pathos. The script remains the same, only the dramatis personae have changed. That’s about all that has happened.

What happens when we say that? I suggest for your consideration that this view normalises globalisation. If it has always been with us, it is wrong to ask fundamental questions of it. It is wrong for us to critique it. We are all products of continuing processes of globalisation. I think “the nothing new” folks are extremely superficial in their characterisation of globalisation. They do not take into account some of the revolutionary changes, which have occurred in information and biotechnology. There was nothing corresponding to cyber technology, cyber space at any human time in history. Take biotechnology, genetic mutation of plants, animals and now human beings, the human genome project. Nothing quite like this had happened before. You can well say, in response that, the Spinning Jenny transformed, revolutionised the structure of our mode of production in the industrial age. Henry Ford revolutionised the world with the invention of the car. Therefore, there have always been innovations. With great modesty, I wish to suggest, that while technological innovations have changed the world, digitalisation and biotechnology have totally transformed the very meaning and nature of human life in a way that is irreversible. For the cell biologist and for the genetic engineer human life is nothing sacred. It has no status other than being a code of information. There is nothing sacred or mysterious about human life anymore. According to the Nobel Laureate French Life Scientist Pierre Grass, a single cell contains information of the entire set of Encyclopedia Britannica put together. That’s the genetic information that a single cell carries. Our notion of life is changing. Life is a programmed code of information, which can be stored, read, manipulated, re-engineered. There is nothing more than that to

life whether in plants, whether in human beings whether invertebrates or mammals.

We're now in the fourth generation of Digitalisation. Robots are now capable of thinking and handling complex human problems as evidenced in journeys of and to space. They are not only programmed, they are also self-programming. Artificial Intelligence has reached new heights. Most of us are no longer human beings but Cyborgs. Cyborgs are beings which are half-human half-machine. The computer puts something in a code language, which a human being reads to excerpt translation. Some mutation has thus occurred in our own personality. I won't develop this further. The point of this small elaboration was to say that those people who say there is nothing new about globalisation probably do not understand development in artificial intelligence, biotechnology and human genome project. It is absurd to say that there is nothing new in contemporary globalisation. It is misleading. It is mischievous. It is a mystification. But I am quite worried when intelligent friends say there is nothing new about globalisation because they lull us into public slumber, by their mythical narratives of continuity.

III

Let me go to other kinds of people who go to the other extreme and say contemporary globalisation constitutes a total break with the human past. I think that they make a major point. Contemporary globalisation is unique, because we've now moved from manufacture, production to information economy, to knowledge based capitalism, and to a genomic global culture in ways that could have been difficult to imagine just twenty years ago. I cannot resist in parenthesis the modernisation of our appellate courts and the Supreme Court of India, even justices have access to digital expertise and I'm sure the quality of justice has, as a result significantly improved.

The second feature, the second basis for this view of the radical break is that the solidarity movements of the working classes of the past two centuries are over. They are replaced by solidarity of trans-national capitalism across borders. They have been replaced by instant e-mail, cyber solidarity. Mass movements now exist in cyber space not in direct action. I wonder what that man whom I have to call Mohandas only, because there are so many Gandhis and Karamchand including our one time favourite television espionage (Doordarshan *Jasoos*) serial. I wonder what Mohandas would have said to this. He would have been completely bewildered. Because he led a mass movement for Indian independence. Now mass movements of this nature are

a thing of the past. But in cyber movement, you sign an appeal and send it in a minute. Cyber solidarities are replacing mass movements and direct action.

New social movements, like environmental movements, feminism, human rights movements are situated within the logics of global capitalism. In a book that should soon be out, called "The Future of Human Rights" being published by Oxford, I speak about the transformation of human rights movements into human rights markets. And, I give evidence of how there is a crisis of investor rationality and producer rationality and the consumer rationality in human rights markets. Movements become markets, that is the economic logic of globalisation. Globalisation permeates social movements by new technology. You might have heard of the great enthusiasm with which the Grameen Bank of Bangladesh last year thought it was empowering women in remote parts of Bangladesh by providing them with cell phones. I don't want to say it's good or bad, just illustrating the power of the new technology and the transformation of social into technological. I can go on but I must stop on this aspect. Globalisation on this view permeates all aspects of human life unequally now, between South and North, but over a period of time regardless of the distinction between North and South.

The second group of people who maintain that there is no continuity at all with the past, that globalisation of today has no relation with human past hold a different message than those who say globalisation is nothing new. And the message that second grade of people hold is a complex one which reduced to one sentence means obsolescence of all previous forms of thinking, whether it is nation state, whether it is social movement, whether it is mass movement whether it is direct action. You must begin afresh. Old technologies of social action simply will not do. It is waste of time to read 25 volumes of the history of working classes for example brought out by the Progressive Publishers in Moscow before the counter-revolution happened. It is useless, they would say, to read it. There is no possibility of any such thing ever happening again. You must innovate social action within the logic of the global market and within the constraints of the global capital.

IV

The third view and that's my view which is rather silly or simple. I try to combine the best of both the views. I say, yes, globalisation has always been occurring and there is something very radical about contemporary globalisation. Therefore, I distinguish between G1, G2, and G3.

G1 is a globalisation that happened from my limited historical point of view, during the long dark night of the colonisation of the world for—200 years long, dark night. And, that was a species of globalisation where there was an intensity of contact from Britain in India to Portuguese in Angola, Belgians in Congo. There were many types of colonisation all vicious in kind but some more 'benign' than others in terms of patterns of dominance. These all put together were designed to planned devastation of the colonies for the benefit of the metropolis; all forms of colonisation were deeply exploitative and arrested economic growth in the colonies. We learn from the emergence of ecohistory how colonisation irreversibly destroyed environment and the human –nature nexus. Let us then say that G1 is the globalisation under the auspices of colonialism and imperialism.

G2, for me is that phase of globalisation which begins with the adoption of the Universal Declaration of Human Rights and is shaped between 1949-50 – 1980-85 under the auspices of the United Nations and People's Movements for Self-Determination. That's the golden era of declaration and enunciation of Human Rights standards. Although affected by various phases of Cold War this globalisation was a kind of morally inventive globalisation. It gave new languages of Human Rights to the world. It gave a powerful test of legitimacy of power everywhere. It gave us a measuring rod by which to say whether a particular regime of power formation should be regarded legitimate or not. It created a global judicial culture. Between 1950 and 1985, there was solidarity among lawyers and judges and those who worked towards people's movements. Their work in framing new languages of human rights, new ethics of power was fantastic. And, G2 to my mind simply speaks to us of three things; make governance responsible, make power accountable and make state ethical. These three ideas of G2 can be put in hundreds of formulations. We can worry about the distinctions between accountability and responsibility and so on but this is not the occasion to go into it. But a human rights oriented rule of law means that we make power in all its hiding places accountable to justice and rights. This is a great invention of G2.

G3, in India begins with the critical inquiry and reform with the regime of Mr. Narsimha Rao and Manmohan Singh, who began to reverse the constitutional conception of development. No doubt, the economic situation they inherited was grim in all respects and determined steps towards recovery were essential. There remained available abundant constitutional means to tackle with fiscal and monetary crises. For example, financial emergency under the Constitution could have been declared., revenue laws strictly enforced,

public corruption may have been declared as an offence almost as serious a treason. Conspicuous consumption of national income by ruling classes and civil servants, and exorbitant cost overruns in public/ developmental projects, could have been vigilantly curbed. Instead of any determined pursuit of this, a wider economic reform agenda was pursued, without any serious regard for the human plight and rights of millions of Indians impoverished. Reforms proceeded as if Part IV of the Constitution did not exist so as to cast imperatives to ameliorate life prospects of the 'weaker sections of Indian society'. The Directive Principles of State Policy were, in effect, repealed, symbolising a wholesale constitutional subversion. Worse, the five -decade old edifice of labour jurisprudence also began to be dismantled. Regardless of fundamental differences in constitutional modeling, India thus begins a G3 odyssey of catching up with the Newly Industrialising Southeastern Asian Nations and China. An unholy alliance between the political regime, indigenous and global capital, and international financial institutions thus occupies the constitutional spaces of Part III rights and Part IV principles.

The Indian G3 begins with world transforming changes around the eighties, after the fall of the Berlin Wall. It begins when the end of everything is proclaimed, end of nation state, end of ideology, end of history. Francis Fukuyama wrote a book, which we all unfortunately read. It is a nice book, "End of History and Last Man", where he says that there is no alternative to liberal free market global democracy. There is no alternative to capitalist democracy. History is exhausted. There is nothing you can do. This is it. The party is over. The future evolution must necessarily reproduce or clone the histories of Euro-American democracy, free market democracy. There is nothing outside for human future, there's nothing outside what happened in Europe and America. There is no other experimentation possible now. G3 is heavily in contradiction with G2 and this is the contradiction that matters to some of us. And, it will require some time to unravel. G3 in our first phase is simply or starkly in contradiction with G2; because of four or five things.

First of all, it marks a process of recolonisation of the world. It is a process of recolonisation, where at least the third world is being recolonised, but where there are no visible colonisers. We all like Domino's Pizza, we all like Coke, innumerable types of consumer goods from endless varieties of toothpaste, shampoos, to electronic goods and cars. Day before impossibilities, and yesterday's luxuries, have today become necessities. We like the new things that the market is flooded with...we do not feel that we have been colonised. It is those things that rule. It is the rule or the ruling of the world by

multinational global corporations. It was easy comparatively to fight against apartheid or the British rule in India because there was a visible coloniser out there. Now what is happening is recolonisation by global capital. I'll explain a bit. There is the process of auto-colonisation which causes acceptance of the values of certain kind, material goods of a certain kind as defining the good life. So nobody forces you to have certain tastes or certain desire... you develop your desires yourself. That's the splendour of market. That is how the market works, Marx used to say that capitalism does not lie merely in production of goods and services, the logic of capitalism lies in manufacturing of human desires. Capitalism follows the logic of creation of desires not the end of satisfaction or whatever. The first point about G3 is that it recolonises old territories and minds.

Second G3 demands a singularly privileged treatment of the community of foreign investors. Foreign investors have to be treated better or in a more favoured position than one's own citizens. And I need not speak to you about this in Andhra Pradesh in an era of mass suicide by farmers. Citizens may commit suicide, but the state has to be globalised by allowing foreign corporations, by allowing multinational companies. Who ever said that economic development is cost free? The problem is: which peoples are made to pay the cost of development? It is a question of sensibility.

Third, if you look at the WTO, now in its new avatar of TRIPS and TRIMS. If you look at the obscene draft, of multilateral agreement on investment, it specifically says labour law, environmental standards associational rights must all be secondary to the rights of the investor. It is in black and white, ladies and gentlemen, for all to see, prepared submitted and discussed by the OECD. And, it will shortly re-emerge in the new rounds to revise the WTO.

Four, the nation state is said to have ended or in the process of ending. What is meant by the end of the nation state? I put it to you, that, what G3 says when it says end of nation states, it means end of the redistributive state — State that seeks to redistribute property. It means the end of Part IV from the Constitution of India. It means the end of fiddling around with the right to property. It means the end of the Interventionist State, which tries to empower the weaker sections of Indian society. We all refer, especially the Indian Supreme Court Justice, on and off the Bench, to the 'weaker sections of society'. So do various political actors. But we do need to ask the question: how come certain sections of Indian society were declared weaker sections of Indian society in 1950 and in the year 2001 also they are weaker sections of Indian

society. I would suggest that we amend that formulation by referring to progressively weakened sections over the last fifty years. They are not necessarily weakened, but progressively weakened for the last fifty years. This is the kind of thing that G3 will do. The foreign investor, the World Bank and the IMF is not asking for demise of the nation states. It wants a strong nation state for itself. It wants a nation state, which prevents trade unions from mobilising against foreign capital. It wants a strong nation state, which builds almost every second day, a new fly over! Infrastructure development is now pursued because foreign investors need it. They also need protection against crime and anarchy, political crimes. In fact, there is an insurance scheme in the making whereby countries of the south will have to provide an insurance cover for global corporations amounting to millions of dollars against political risks. So the end of one kind of nation state signifies but rebirth of a very strong state; capable of protecting and promoting interests of global capital.

Five, de-governmentalisation of national governance in the South. The state actors are not supposed to originate macro-economic policies; these are to be made in Washington D.C by the World Bank and the IMF or the other sister institutions like the Asian Development Bank or whatever. The international financial institutions are not democratically elected. They're not accountable or responsible to anyone. And yet they define for two-thirds of human kind. What autonomous path of economic development may remain available? You might have heard recently about what is happening in Argentina but it is the same story everywhere.

Finally, contemporary processes of globalisation inaugurate a death or a dying of the languages of social justice. It makes now little or no sense to speak of social justice. I wouldn't ask the Lordships here to be presumptuous but if they were to look back at their judgements and ask, when did they last use the expression "social justice" in their judgements they will know what I am talking about. The language of social justice is dead and gone. It does not make sense to people, policy makers, to global elite. It is gone. The languages of human rights will disappear in another 20-25 years as moral languages. We have no languages of justice in contemporary globalisation to critique its processes. There are no languages left to say whether something is morally good or bad. It makes no sense. Neither the CEOs nor the multinational industry nor the World Bank and the IMF nor a large number of powerful countries of the North understand the notion nor have any use of for social justice. This is well documented.

G3 ie, contemporary globalisation marks the emergence of a new paradigm and this is the last section of the talk. There is a new paradigm of

human rights now emerging. The old paradigm of human rights was human rights for human race, groups of human beings, minority human rights and so on. Universal Declaration of Human Rights speaks about Human Rights of *Human* persons. Against the old paradigm, I call it old and vanishing paradigm, there is now in existence an emergence, what I call, trade related market friendly paradigm of human rights. And, the trade related market friendly paradigm of human rights is slowly displacing human rights of human beings by privileging the human rights of global corporations. This happened in the Bhopal judgement in the Supreme Court. Petitioner victims were not even accorded natural justice. One Raghunandan Pathak and his brethren, one of them is now rewriting the constitution, as the Chair of the Constitutional Review Commission, decided not to hear victims at all. This great judge I'm fond of, I'm mentioning him again and again, because when we went in review petition this great judge quoted Macbeth to us. Justice Venkatachalaiah said, as I said this morning at the NALSAR, to do a great right, it is sometimes permitted to do a little wrong. This great literary mind is invoked by a great judge of course; in order to ensure that foreign capital is not burdened by claims of absolute multi-national enterprise liability, by US 3 billion dollars damage compensation award. That is the great good. In order not to burden the global corporation with this enormous inhuman cost, small wrong has to be done. Let the victims who already suffer, suffer a little more. After all, in the next birth they will be better off and they will reach the next birth unfortunately, cruelly very soon. So we have already a special place accorded to the rights of global corporation. A special place over and above the rights of human beings.

Corporations now claim a right to freedom of speech and expression. The American Supreme Court, I am afraid the Indian Supreme Court got scent of it, has also extended this doctrine of commercial free speech. What does this doctrine mean? It means corporations have a right to freedom of speech and expression, even when they fund political parties unscrupulously, even when they hurt and harm Indian citizens by insisting that obviously unsafe products and process are safe. This absolute freedom of speech and expression is now a right of corporations as against individuals. The right of corporations and, hold your breath, their honour and is recognised increasingly in the EU and America. This right is protected by what is known as SLAPPS. SLAPPS are Strategic Law Suits Against Public Participation. Corporate managers world- wide have pursued a legal strategy of filing injunctive relief or high damage suit for loss of reputation by activists. Activists criticising corporations have now to hire lawyers. They have to be careful in what they say. In India, one of the Korean Car Companies, threatened Anil Agarwal with a million

Dollar suit. Judges liberally agree world wide that Strategic Law Suits Against Public Participation is a human right of global corporations even when it contradicts the human right of free speech of citizens guaranteed by the Constitution. I can give you many more examples. I in fact drew a charter of the Rights of Global Capital and submitted it to the U. N summit on Social Development in Copenhagen in which I listed the kinds of Human Rights that Global Capital claims including the right to immunity from corruption of executive minds from the language of human rights. You can think of many more.

Corporations say it is important for the future of human rights; they insist that when granted, these are higher rights than the human rights of human beings, they will help to change the world. And, they have a point. They say, which state has delivered the right to health? We deliver the right to health. A recent example is that of South Africa and the problem of the Aids drug. Look at the way in which Ciba Geigy allowed the generic brand to be sold in South Africa. 'We created the conditions for feminist movement worldwide', say global corporations, 'by experimenting with contraceptive devices and contraceptive technology we made it possible for women to claim reproductive rights over their body. Without this technology the assertion of the rights of a woman over body would still be meaningful but not very effective.' I can carry on arguing on behalf of the corporations. Some of them are saying 'we fed the hungry.' The right to food is served by biotechnology multinational corporations. The moral ground for contending that the human rights of corporations must be recognised as higher than individual rights of human beings, that the rights of the people should yield to the rights of global capital is based on some kind of progress narrative of global capitalism. This is what Amartya Sen, unfortunately and now characteristically argues in the *Times* article. Without protection for the right to property, without heightened protection of free market and economic liberalism, without protection of the Intellectual Property Rights of bio-technological corporations with protection of the honour and reputation of corporations, the world may have all Declarations of Human Rights, but no capacity to deliver them. That's the best argument I can make, on behalf of the community of global capital or the multinational corporations.

V

It is not for me to say in conclusion whether this progress narrative is right, it is not for me to say whether a trade related market friendly paradigm will eventually destroy whatever is left of human rights. Concern with torture,

terror, political reconstitution of the subject of human rights will survive not so much the human rights movement for equality, dignity, shelter and livelihood. These will be off the direct agenda of state, judiciary and legal profession. What the state judiciary and the legal profession will be overly concerned with everywhere over the next 25 years is protection of trade related market friendly human rights. "Not *human* human rights". Good thing? Bad thing? I do not know.. even if I know I'm not telling you. I guess you might have guessed where I perhaps stand.

Let me now end by saying that we are seeing all over again a reincarnation of the myth of progress, we are seeing the old idea of progress, of emancipation, the fulfillment of material needs, emancipation from deprivation through science and technology. As the delivery mechanisms are defining what is the good life, we are seeing a recession of the idea that these definitions ought to be made not in the technocratic domain but in the political domain. Because what is politics after all? Who produces the provisions of good life? To whom are the communities of scientists and technocrats and CEOs of multi-nationals or national corporations really accountable? Therefore, the whole idea of politics is that people, simple idea, by participation in civic life would define the meaning of good life, apprise for themselves and for others. So really what is happening is the disappearance of politics. We might say in India certain kinds of politics better disappear. I'm not talking about that kind of politics. I'm talking of participatory politics, where people acting together in civility and co-operation make their own destiny. A situation vastly different from when a few people, the bio-technologists or digital capitalists or whoever, present to them, their own deliberations, as the best possible form of human fate.

Michel Foucault, a great French postmodern thinker was asked on his dying day what did he think about politics. And, with his observation I will now end. He said:"If revolution is the other of politics, and if it is correctly being said that possibilities of revolution have ended can politics survive?" This is the stage at which globalisation has brought us for good or for bad.

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