

## **Human Rights in ‘Controlling and Combating Corruption’: The ‘Uselessness of Good Ideas?’-- Synoptic Remarks**

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### **Prefatory Remarks**

Theory-based conversations and impassioned politics of social action and movement talk concerning corruption vary a great deal in their assumptions and their approaches. Most movement folks remain, at times willingly, ‘illiterate’ in theory-based approaches; likewise most theory folks remain little-versed in the paralogics of social protest. No doubt, the activist and movement folks may be stunned by some questions that developmental and new institutional economists raise: the former, for example, suggesting that some levels of corruption may be ‘functional’ to development and the latter even wondering ‘why levels of corruption are not even higher’<sup>2</sup>! Even so, the question of beneficial side-effects is a serious theoretical thematic; even as I write this, I come across an article speaking to us about the ‘developmental’ effects of Somali Piracy<sup>3</sup>. Activists who disdain such explorations as ‘justifying’ corruption need still to be aware of the limits of a moralizing politics just as ‘rational choice’ theory folks need to reconceptualise the ‘costs’ of corruption as singularly experienced by the worst victims of ‘corruption’ in ways that give dignity to their voices of suffering. Someday, if indeed the day ever comes, this divide may be more imaginatively addressed and even perhaps redressed.

Corruption theory is not by any means a unified field. Disagreements persist about what sorts of conduct and behavior should be counted as ‘corruption’; the ways of measurement of the levels of corruption; appropriate law/policy regimes entailed in countering corruption; methods of comparative and historical study of corruption and their pertinence; and the causes of corruption. The only areas of agreement are: (a) corruption-free society is impossible; (b) it is best to engage address governance corruption as a matter of highest priority.

In contrast, and at rate as I read the narratives of popular anti-corruption movements, movement-folks regard the ideal of a engagement with governance corruption-free society as attainable and further suggest that any excessive engagement with

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2 See, *The New Institutional Economics of Corruption* (London, Routledge, 2005) at 3 (Johann Graf Lambsdorff, Markus Taube and Matthias Schramm, Ed.)

3 See, Anja Shortland, “ ‘Robin Hook’: The Developmental Effects of Somali Piracy”. Economics of Security Working Paper 54, Berlin: Economics of Security” [www.economics-of-security.eu](http://www.economics-of-security.eu) (visited 15 October 2011.)

governance corruption ignores the pervasive domains of social conduct, inclusive of state-like actors, so varied and different as the wielders of economic and religious power on the one end of the spectrum and agents of counterpower including resistance and even insurgent movements.

Further, many an anti-corruption crusade in the Global South, and movements against the state bureaucratic socialism which birthed the formation of a post-socialist societies, remain imbued with an ethical approach – which irritates the knowledge producers of corruption theory. This approach transforms the terms of discourse: corruption emerges not merely as a political evil, but an ethical one constituting a quintessential perversion of human autonomy, always grounded in the idea of the performance of one’s obligations towards the others. In this view, the moral life of individuals as well as the forms of associational life, each one of us remains infinitely obligated to regard the other an end in ‘itself’ and never to regard the other as means to one’s own agency. This perspective stands articulated variously – whether expressed in terms of a Kantian ‘Categorical Imperative’ or the languages of Emmanuel Levinas as an infinite obligation towards the ‘face’ of the suffering, even vulnerable, others<sup>4</sup>. What poignantly stands contrasted here is a distinctive ‘political economy’ type approach that regards ‘corruption as an ‘order of things’ inherent or even endemic to governance practices.

These are broad images of contrasting styles of thought and action that I must indeed mention, even when I may not, within the constraints of this paper be able to directly address. Allow me, then, to start with the caution that Susan Rose-Ackerman struck<sup>5</sup> in saying that ‘good ideas’ are in themselves not enough in combating governance corruption. Allow me also, some reader-unfriendly yet environmental – friendly acronyms that I here filly deploy!

Good ideas are those then which can be put to work-a-day use in combating the menace especially of governance corruption. In no field, the pragmatist counsel—truth is the cash value of an idea--- seems more pressing than in combating and controlling corruption [CCC, hereafter.]

CCC discourse and action agenda does not deny the importance of a multidimensional understanding of ‘corruption’; yet has limited use for historical, cultural, and anthropological understandings; excluded thus also are (to borrow a striking metaphor from Perry Anderson) the ‘lineages of state’ and utopic discourses envisioning ‘post-politics’ aiming at the elimination of corruption. It remains wary of any distraction from the tasks at hand; understandably, culture or history based forms of understanding that generate some ‘justificatory’ strategies such as the practices of ‘ethno-clientism’ (in some African societies and states, though not surely exclusively at these sites) are of no use for CCC. Not fully understandable is the dread of the ‘J’ word: the notion that systemic governance corruption—SGC,

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4 See, Upendra Baxi, ‘Judging Emmanuel Levinas? Some Reflections on Reading Levinas, Law, Politics,’ *The Modern Law Review*, 72(1): 116-129(2009.)

5 See, her magisterial work, *Corruption and Government: Causes, Consequences, and Reform* (New York, Cambridge University Press, 1999.)

hereafter-- is inherently offensive to deeply held notions of justice in bounded societies; notably also remains conspicuous by its absence the nascent discourse of approaches to global justice<sup>6</sup>.

What emerges as paramount then is a specific regime of global social policy (GSP) discourse. Its subtexts reveal an epidemiological approach, yielding preeminently diagnostic and therapeutic tools and programs of action. Understandably, then, SGC emerges as a cross-border problem; governance corruption is thus no longer apperceived as a necessary evil but rather as a threat to 'our common future.' GSP constructs an ever-widening scope for intergovernmental and inter-institutional networks of common global social cooperation fashioning CCC strategies. In this sense, the pandemic of 'failed states' (or rather States *made to fail* differentially by the actions of global hegemonic powers) emerges as a serious GSP concern.

Well-developed remains in GSP/CCC discourse articulate visions and versions of common/public goods. Governance transparency and accountability emerge not just as stratagems of CCC but as global public virtues. So does the idea of development, human and social, that gets corrupted itself by SGC; GSP also shares complex, languages of 'good governance. Further, it insists on providing a level- playing field for the communities of multinational corporations and direct foreign investment regarded as engines of national, regional, supranational, and global development. In privileging overall the discourse of economic theory and policy sciences, GSP approach to CCC as developed by networks of international, supranational, regional institutions and organizations and actors is however not concerned to develop any explicit meta-ethical framework.

Various actants (to evoke Bruno Latour's actor-network phrase regime) also contribute to the shared objectives of GSP/CCC. I refer here to the infinite routine labors of assortments/assemblages of human rights and the 'new' social movements and also to the various avatars of the 'New Sovereign'--- people's movements against SGC, a most resplendent example here provided by the 'Arab Spring.'

At play and war here are two different genre of public reason: human rights and social movement/activist discourse participates in public reason highlighting the costs of SGC (and corruption generally), and fostering the tasks of CCC in many different ways. In one register, the activist discourse manifests the variegated histories of affect named as 'indignation entrepreneurship'<sup>7</sup>. These histories are the diverse roles in which the activist discourse contributes to the shaping of the CCC

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6 See, generally, for the dread of the 'J' word, Upendra Baxi, 'The Place of the Human Right to Health and Contemporary Approaches to Global Justice: Some Impertinent Interrogations,' in John Harrington and Maria Stuttaford (ed) *Global Health and Human Rights* (London Routledge, 2010).

7 See Edna Ullmann-Margalit and Cass R. Sunstein, 'Inequality and Indignation,' *Philosophy & Public Affairs* 30: 4, pp. 337-362 (2001).

strategies and policies, not as fully as one may wish ‘integrated’ in the GSP/CCC discourse.

The variances are as important as the commonalities between GSP and activist discourses. Common to both remain of course the insistence of governance transparency and accountability. Even so, the differences remain significant. Many a Global South social and human rights movement engages SGC as joint production of national governing elites and the forces of neoliberal technoscientific global capital. More than the pale reference to the ways in which SGC distorts-- and miscarries-- anti-poverty programs (now stylized in a neoliberal gesture as ‘inclusive growth’), these movements foreground the scale and depth of human and social suffering thus produced. They thus protest the GSP version of common public good (free flows of global capital investment across, marking an advent of deregulation as a form of regulation) in the languages of state capture very differently than available in policy sciences/economist approaches. At stake, then, are radically different acts of authorship of the CCC strategies. In my recent work<sup>8</sup>, I demonstrate why is important to take these acts of authorship seriously: put another way, I believe that suffering humans and communities of resistance remain always the first authors of contemporary human rights values, norms, and standards. In the CCC context they articulate a radical impulse urging us to take seriously the SGC forms of human and social suffering as way of taking human rights seriously.

It is no part of my intention to offer any critique of the GSP approach, at least in so far as I grasp this. If at all, this must remain a conversational task for another day! Rather, all I wish to bring to the table is the question why taking seriously the Idea of human rights may *not* be good enough as contributing to the current wave of global concern about SGC. There is no doubt that human rights elements are often apperceived in GSP discourse as ‘counterproductive’ to controlling it, if only because these often escalate transaction costs via stringent due process type requirements that evoke the standard entailments of presumption of innocence, problems arising from the evidentiary standards, protracted trial processes, the constitutional legality of asset control/confiscation, and the vagaries of adjudicative process. While anti-corruption strategists and advocates do not deny the importance of due process rights, at least some of these urge minimalist deference and call for an effective re-tooling, if not restructuring of, legal orders.

In general, CCC is thought in the main as a set of regulatory mechanisms providing a variety of disincentives to SGC. Here, the focus is on understanding structures of governance corruption in terms of markets whose economic rationality needs to be enfeebled incrementally and progressively by regulatory policies. The enunciation of a specific, as well as a universal human right to immunity from SGC which I here urge in some detail may be regarded as complicating, if not enervating, the objectives and strategies resulting from GSP/CCC goals of fostering common social cooperation among states and international organizations. Articulation of a new human right complex of norms and standards seems often thought as constituting entirely avoidable set of impediments to a programschrift of a global

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8 See, Upendra Baxi, *The Future of Human Rights* (Delhi, Oxford University Press, 3rd Ed, 2008).

anti-corruption action agendum conceived almost entirely as an affair of GSP. GSP-oriented broad based consensus is thought to provide a superior option than any that any be eventually provided by human rights based approaches.

### **Towards an Enunciation of a New Universal Human Right**

I still wish to suggest the *intrinsic* importance of a new enunciation of a universal *human right to immunity from SGC* [shortly put hereafter as ‘new human right, or NHR.’] Many questions arise, of course. *First*, what would be the normative content of this new right – the content question? *Second*, how may this enunciation relate to the ‘family’ of existing human rights, whether in terms of the binary distinction between ‘civil and political rights on the one hand and on the other ‘social, economic, and cultural’ human rights, or those of ‘generations’ of human rights—the ‘juridical’ question? Should such a normative enunciation proceed as an emanation from the extant ‘soft’/‘hard’ law regimes of human rights or emerge autonomously of these? *Third*, the scope question: who would be the addresses of this new Right? And how may this enunciation help or hinder the existing GSP regimes? *Fourth*, the implementation question: How may be such a right implemented /enforced within and across states?

A general remark justifying any advocacy of this new human right is necessary though clearly not sufficient. The need for an explication of a NHR arises, if only because SGC forms and grammars often militate against the exercise, enjoyment, and realization of internationally enshrined human rights values, norms, and standards, and contributes to regimes of repression entailing both human *abuses, and human rights, violations*. Given this, how may we understand the fact that international enunciations/instruments do not codify immunity from governance corruption as a human rights value?

Even as late as 2009, the International Council on Human Rights and Transparency International Report entitled *Corruption and Human Rights: Making the Connection* has to invoke, rather heavily, a demonstration of how ‘corruption’ (articulated broadly) results in violations of severally enshrined human rights values, norms, and standards. Important as all this remains, the Report does not go so far as to commend the translation at least of SGC into an autonomous human right to immunity from SGC. Much the same may be said about the overall stance of the 2010 Report *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities*. These remain consequentist arguments, and for that reason no less crucial. Yet, I believe that an articulation of new human rights values, standards, and norms remains equally imperative.

Further and as far as I know, this GSP-fostered reluctance seems also shared by the ongoing labors of the International Law Commission, and the UN Human Rights Treaty-Bodies. The former even pursuing its task of progressive codification of international law—especially of the law of state responsibility – and the latter in its pursuit of international state parties to human rights treaties – singularly fail to articulate norms and standards facilitating progression towards an enunciation of this ‘new’ human right. To offer yet another striking example, the ICC Rome Treaty thus fails to name SGC as an element of ‘crimes against humanity.’

Understanding this lack entails some Foucault-like genealogical labors, as yet not in sight. Further, GSP discourse accentuating SGC criminalization, it may be argued, remains far ‘superior’ than any human rights based regard. If so, the jury remains out, as it were, on this question. Put another way, it is not clear why the two approaches should remain inherently incompatible, rather than mutually reinforcing.

All this then raises the question of value-addition. What may be, put another way, be ‘gained’ and ‘lost’ in this translation from GSP to human rights languages? The several and serial, major concerns thus already framed earlier demand a close attention. I visit here some of these concerns.

#### *The Normative Content Question*

Unlike some eminent human rights scholars (notably Ndiva Kofele-Kale<sup>9</sup>), I do not here advocate any individual and collective human right to a ‘*corruption -free society*.’ My reason for this, far from constituting any disagreement with this ideational postulate, relates to the stark fact that the dominant GSP/CCC discourse remains impervious to any full recognition of these struggle-based utopic ideals, fully scared of the tasks of its translation.

Perforce, I attempt the next best via some translations into the forms of contemporary human rights languages, which dares to present NHR as persuasively prefigured in the pre-existing sources of international law, whether customary, treaty-based, or the exponential growth of ‘soft law’ standard. Put differently, what we have here is an inherently- struggle based instantiation and postulation of a NHR proselytized by the ‘New Sovereign’ and the activist discursive agents. These, in turn, remain beings who seek to affirm the practices of sentimental moral public reason, as well as insurgent public reason, fully contesting the unreasoned reason of globalization often schematized by some arch- practitioners of *avant-garde* corruption theory. At stake then is the prerogative of translation into those of NHR.

My plea for a universal human right for immunity from SGC is based on its necessity in a postliberal world and its deniability as well as feasibility. A threshold problem of course remains analytical: How may ‘we’ operationalize the constitutive elements of the difficult category of SGC? It would be as cruel as carrying MIC to Bhopal, as it were, before so learned a peer group, for me to delineate these elements. Yet, this remains a primary task.

First, as a juridical (not moral) right the new human right (NHR) presents itself is an individual and collective human right to *immunity* from ‘kleptocracy,’ a most comprehensively pernicious SGC manifestation. Put another way, SGC occurs in its most obnoxious form when the Head of a government and his/her regime siphon-off community resources for their own personal gain/greed. As Kofele-Kale reminds us this state of affairs includes ‘acts of indigenous spoliation where there is only a taker, a corrupted individual but no givers or corruptors,’ in turn disrupting

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9     ‘The Right to a Corruption –Free Society as an Individual and Collective Human Right: Elevating Official Corruption as Crime under International Law,’ *The International Lawyer* 34:1, pp.149-178(2000).

the binaries of demand and supply side governance corruption, or the active versus passive ‘bribery.’ I believe that the proposed NHR more adequately addresses this catastrophic SGC form.

Second, and in this sense this NHR is a direct negation of a sovereign right of *impunity* claimed by kleptocrats, whether sovereign- state actors/ networks, or their normative cohorts—the sovereign-like state transcendent entities/networks (see, as to this, the discussion under the ‘scope’ question.)

Third, the NHR that I propose is an aspect of the ‘*right to have rights*’ (to adapt a fecund phrase-regime of Hannah Arendt.) It entails many specific component rights – sets of human rights to right to information, access to equitable and effective procedures and institutions enabling complaints against governance corruption without victimization (such as whistleblower protection and more crucially the right against enforced disappearance caused by state militarism), the right to access to constitutional remedies, including effective witness protection, among others.

Fourth, SGC often assumes governance forms/grammars of ‘state – sanctioned’ or ‘state-protected’ corruption resulting in near-total impunity. What may these terms mean (or be made to signify)? As concerns ‘state-sanctioned’ SGC, we may say that it occurs/ results ‘when committed as part of a plan or policy’(borrowing from the language of Rome Treaty (Article 3); or when ‘committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group’ that results in results in seriously disadvantaging a part of the population’ (to borrow elements of Article 18 of the UN 1996 Draft Code Concerning Crimes Against Peace and Security of ‘Mankind’).

Fifth, the second descriptive term—‘state-protected corruption- remains problematic, absent an international consensus about the core elements of SGC. In my view at least this at least entails a NHR enunciation to a right to an adequate SGR policy and law regimes. These may often lead, in net effect, to various practices of state-protected SGC. Immunity of incumbent elected officials from criminal prosecution provides one example; equally important remain some self-legislated immunity for deposed/superannuated heads of states/governments. Further, many anti-corruption polices and laws, especially the postcolonial, effectively immunize invigilation and prosecution of SGC actors by the requirement of prior official sanction, all too often not forthcoming, nor bound by the due process type entailments for the exercise of governmental discretionary powers. As concerns bureaucratic actors , the requirement of prior sanction for prosecuting SGC feats is based on : [1] the protectionist argument -- the apprehension that in particular business and industry interests (as well as the NGOs) may impale ‘conscientious’ bureaucrats by way of SGC indictment, and [11] an epistemological argument suggesting that only higher-level officialdom remains best poised in terms of sensibility, knowledge, and disinterested expertise to determine whether a prima facie indictment of corrupt acts by public officials in the due, and diligent, discharge of their public powers. At least as concerns the Indian experience, I have critiqued this argumentative set exploring both the jurisprudence of corruption and the

corruption of jurisprudence<sup>10</sup>. I believe – beyond authorial vanity-- that this critique remains pertinent to the formation of a NHR.

Sixth, however, related difficulties stand posed by the bleeding heart of democratic/representative political systems. As Ackerman, among significant others have labored to demonstrate, political ‘representation’ poses some terminal limits for CCC/GSP discourse. The concern here invites some Sisyphean-labors drawing stable, as well inherently fluctuating, bright lines between, and across, licit and illicit campaign funding. When may massive corporate funding of political parties –a genre of the First Amendment human right of corporate legal persons— blur this line of control, so as to amount to SGC? This first–order concern stands enshrined as early as the Universal Declaration of Human Rights (UDHR) that urges us to take serious the notion that ‘Everyone has the right of equal access to public service in his country’ via ‘periodic and genuine elections which shall be by universal and equal suffrage’ (Article 21.) Thus envisaged ‘suffrage’ speaks to us not just about the coequal right to vote but also addresses an equal right to contest in ‘free and fair’ elections for public office. Unregulated corporate electoral funding practices generate vvarious forms of politics of exclusion. It remains unnecessary for me to further invoke the newly found fascination with Article 28 UNDHR which insists that: ‘Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.’

The CCC discourse seeks to operationalize these values by a series of second order concerns, and for that reason no less crucial, of course. It makes necessarily a distinction between ‘legal’ and ‘extra-legal’ sources for campaign funding. Indeed, as Ackerman insightfully points out ‘... strict rules on legal campaign donations may simply drive contributions underground into a corrupt netherworld.’ Outside a radical restructuring of voting systems, the task of controlling SGC invites us to the next best option: the maintenance of a ‘valuable... distinction between legal donations from wealthy interests and illegal, secret gifts.’ Important as this distinction remains I think that any articulation of NHR takes us much further at least in terms enhancing people’s movements towards its further articulation than GSP/CCC talk and action?

### **The ‘Juridical’ Question**

It remains possible to derive this new right from extant customary, treaty-based, and ‘soft law’ regimes (the latter especially in terms of the development of the right to development<sup>11</sup>.) I also believe that it remains hermeneutically possible to derive this new right from a combination of existing international and regional anti-corruption conventions, from comparative constitutional interpretation of basic human rights, and GSP enunciations such as the UN Millennial Development Goals and Programs of Action.

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10 See, Upendra Baxi, *Liberty and Corruption: The Antulay Case and Beyond* (Lucknow, Eastern Book Co.,1990)

11 See, as to this, Upendra Baxi, *Human Rights in a Posthuman World: Critical Essays* 124-196 (Delhi, Oxford University Press, 20

However given the specificity of the NHR here urged, it is best to regard it as an exercise in autonomous rights enunciation. The NHR is not all about facilitating level-playing fields for commercial competition among Euroamerican state and market actors; rather, it aims to establish standards for minimally decent political governance safeguarding the human rights of the worst-off SGC affected humans everywhere, or more fundamentally their right to *be*, and to *remain*, human. Its norms and standards, and questions of scope and implementation, thus open to participatory global discussion will contribute to innovation of a new range of shared strategies to combat catastrophic SGC feats. Equally importantly, all this would enable us to grasp more fully the much-neglected linkages between considerations of global justice, human rights and GSP enactments.

### **The Scope Question**

The NHR extends to all states and state-like (state-transcendent) entities. As concerns states, the NHR crates a corresponding human rights responsibility to enact appropriate sets of national legislative, institutional, and policy measures including those outlined in the preceding section. Further, as some GSP/CCC discourse suggests but this time round reiterated in terms of the NHR obligations all states have a duty (as an aspect of international state responsibility) not to allow kleptocrats—the deposed heads of the state, and their cohorts, regulating the current state of ‘safe havens’ for deposed state predators to benefit from ‘indigenous spoliation.’ Put differently, NHR entails assets confiscation that aims and results into repatriation of stolen national resources/wealth to the peoples of the countries of origin.

A more difficult ‘scope’ question stands presented by acts of complicity and connivance with SGC by MNCs, and related communities of direct foreign investors. Exemplary here remains the UN Draft Code concerning human rights responsibilities of MNCs and related business entities. Article 21 extends to transnational enterprises and other business enterprises. As defined generically by Article 21, these in all myriad forms, any and all business entities that include: ‘any business entity, regardless of the international or domestic sphere of its activities, including a transnational corporation, contractors, subcontractors, suppliers, licensee, or distributor; the corporate partnership, or other legal form to establish the business entity; and the nature of business entity.’ And Article 23 subjects all these entities and stakeholders to a new disciplinary regime of human rights by the prescription civil, political, cultural, economic, political, and social rights as set forth in the International Bill of Human Rights, as well as the right to development, and rights recognized by international humanitarian law, international refugee law, international labor law, and *other relevant instruments adopted within the United Nations system*’ [emphasis added.] In particular, Article 3 enjoins obligations that forbid these from benefiting from ‘war crimes, crimes against humanity, genocide, torture, forced, or compulsory labor, hostage taking, extra judicial or summary or arbitrary executions, other violations of international humanitarian law, and other crimes against the human person as defined by international law, in particular

international humanitarian law.’ I refrain here from further detailing the NHR-type obligations this arising, which I have analyzed elsewhere more fully<sup>12</sup>.

Of course, this normative audacity of the Draft Code presents many a problem; yet it scarcely invites an early remark of UN Special Rapporteur Jonathan Ruggie remark that the Draft Norms do not even deserve ‘the dignity of a third class funeral!’ With his work, we are back again to a familiar articulation of human rights corporate governance voluntarism.’ Space-constraints forbid a critique of the determinate labors of Ruggie-type normative reversal and affront, especially when the nexus between corporate governance and state repression via SGC remains writ large.

### **The Implementation Question**

On the international register, once a treaty-based NHR stands enshrined, a new UN Treaty-Body will have the custodianship of its interpretation and implementation.

Already, however, some exemplary acts of Global South Apex Court adjudicatory leadership suggests ways in which SGC may be brought to book. I may here speak about the Indian example that I know best. The Indian Supreme Court has continually reinforced the autonomy, and the authority, of the constitutionally – ordained device of relatively autonomous national election commission to superintend corrupt electoral practices. The Court has gone beyond: its suggestive jurisprudence has led eventually to a Right to Information Act, and its constant replenishment. In the face of Parliamentary reluctance, the Court has successfully legislated detailed asset disclosure by candidates in the electoral fray as a justifiable human rights norm and standard. Further, in some justifiable outpourings of judicial activism the Court has variously asserted its supremacy in prescribing strict constitutional standards of integrity in appointment of the Central Vigilance Commission; taken over the executive functions of the day-today monitoring of SGC high profile cases; and even appointed specialist investigative teams/committees to assist the Court. It has also transformed the quotidian rules of evidence to allow ‘sting journalism’ video recordings as prima facie evidence of SGC<sup>13</sup>.

The Court’s doings fly in the face of the universalization of prescriptions for judicial role and function – the USA stylized discourse about the ‘anti-majoritarian’ dimensions of adjudicatory leadership. Without engaging the complexity of adjudicatory leadership role legitimation, the short point here is just this: when representative institutions continue to conflate ‘legal’ and ‘extra-legal’ electoral funding practices, a NHR type judicial activist orientation contributes mightily in re-drawing (at least as the Indian experience reveals) some bright-lines. In the context of this deliberative Bellagio moment, the concern is just this: How the ways of apex adjudicatory leadership may reinforce a sensibility towards a NHR, marking a

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12 Upendra Baxi, *The Future of Human Rights*, Chapter 9.

13 See also, C. Raj Kumar, ‘Corruption and Human Rights: Promoting Transparency in Governance, and the Fundamental Right to Corruption-Free Services in India,’ 17 *Colum. J. Asian L.* 31(2003-2004.)

formation contributing towards future itineraries of human rights oriented collective growth of sentimental public reason militating against SGC, and also contributing to the prowess of GSP/CSS movement?

It needs noting that adjudicative Indian leadership has proceeded via a remarkable responsiveness to activist initiative, often to point of converting the Apex Court into the visages of a New Social Movement. Similar stories abound for South Asian Apex Courts (outside Burma) and much of the Global South.

By way of a conclusionary word, all I may say with utmost brevity is just this: the practices of activist discourse of resistance and the voices of the new insurgent Sovereign in Global South speak to us clearly and compellingly about the decisive importance of a new universal human right to immunity from SGC. Perhaps, then, GSP/CCC discourse may anxiously consider the task of translation of voices of human and social suffering into the languages of human rights values, norms, and standards?

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