

# Shifting Power and Human Rights Diplomacy

## India

*Edited by Doutje Lettinga & Lars van Troost*



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Strategic Studies is an initiative of Amnesty International Netherlands. Since 2013 Strategic Studies has been mapping out national and international social, political and legal developments which can affect the future of human rights and the work of Amnesty International in particular.

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In his speech at the 69th UN General Assembly Session in New York on September 28, 2014 India's Prime Minister Narendra Modi affirmed India's commitment to multilateralism. At the same time he stressed the need to accommodate emerging powers in existing institutions of global governance.

“Today, more than ever, the need for an international compact, which is the foundation of the United Nations, is stronger than before. (...) Our efforts must begin here – in the United Nations. We must reform the United Nations, including the Security Council, and make it more democratic and participative. Institutions that reflect the imperatives of 20th century won't be effective in the 21st. It would face the risk of irrelevance; and we will face the risk of continuing turbulence with no one capable of addressing it.”<sup>1</sup>

India's lobby for a permanent seat in the UN Security Council matches its desire for recognition as a major power in the 21st century. It ranks fourth in military power, before two of the five permanent Security Council members, third in terms of Gross Domestic Product, after the United States and China, and second in population size.

Many expect that the longer India is denied a permanent seat at the table, the less willing it will become to seek compromises in negotiations over international norms, rules and procedures and the more it will engage in forum shopping and bilateral agreements to advance its interests. This may lead to increasing paralysis of international institutions and an inability to solve crises (Rüland 2012). But even when India's quest to join the UN Security Council will be successful, the work of today's institutions of global governance will be transformed, perhaps beyond recognition. After all, India's new seat at the table will most likely be one of many changes in the dynamics of the United Nations and other international institutions. India is not the only country knocking at the door and it is not just the door of the Security Council room it and others are knocking on.

India's (re-)emergence at the world stage occurs at a time that its neighbor and rival for regional power and influence China is looked upon by many as a contender for superpower

<sup>1</sup> Prime Minister Narendra Modi's speech at 69th UN General Assembly (full transcript), September 29, 2014. Available at: <http://www.singjupost.com/pm-narendra-modis-speech-69th-un-general-assembly-full-transcript/>.

status, expected soon to have the capacity to project decisive political, military or economic power in different parts of the world. India's foreign policy and partnerships have to factor in the closeness of this heavyweight.

Besides this, India is part of a volatile region in which Tibet, Xinjiang, Jammu and Kashmir, Pakistan and Afghanistan are only a few of the powder kegs standing around, and each in close proximity of others. Surely, neighborhood policy in India is of a different kind as in Germany or the European Union, even when taking the Ukrainian crisis into consideration.

History, geography and geopolitics play their part in India's current and future foreign policy and in the promotion and protection of human rights, or lack thereof, as part of it.

### The Shifting Power and Human Rights Diplomacy series

*The Shifting Power and Human Rights Diplomacy* series focuses on the particular consequences of changing international power dynamics for the global human rights regime. It starts from the assumption that more likely than not the international system for the protection of human rights will be altered as a result of global power shifts, because it is based on certain norms, principles and rules that may differ from the approaches preferred by emerging powers.

The present human rights regime is, for instance, governed by legally binding human rights treaties, international norms and principles that are implemented in domestic regimes and institutions, with oversight and monitoring powers vested in (predominantly) UN bodies. This 'rules-oriented' approach towards multilateralism may compete with 'relational' perspectives of emerging powers, which are often said to favor decision-making by consensus, absence of treaty obligations, political commitments and respect for national sovereignty (Keukeleire & Hooijmaaiers 2014). When – and if – the influence and voting weight of emerging powers increases in UN bodies like the Human Rights Council and Security Council, such different principles and norms may transform these international organizations and therewith the international human rights regime.

It is highly uncertain whether the rise of new powers and the emergence of new alliances will result in more democratic, participative, progressive or effective global institutions. It may well be that reformed UN bodies will continue to be seen as a tool for the protection of vested interests but then of an enlarged pool of elites. Moreover, if emerging powers will use their global influence to move other states to respect human rights, which is not a given, they may prefer more compromising strategies or push for other rights interpretations and prioritizations than current dominant powers. The latter, moreover, may also revise their human rights strategies when confronted with China and other assertive heavyweights whose economies are increasingly interdependent with their own and competitive in relation to third countries.

Therefore traditional powers may become less willing to publically condemn and pressure foreign governments to respect human rights through their commercial, trade, military or aid policies or through UN procedures.

For international human rights organizations like Amnesty International that have promoted human rights protection through the UN and the foreign policies of states it is imperative to anticipate a new world order in which rising powers in the Global South and East will exercise more weight in global governance. A good understanding of such powers' past and present foreign policy objectives and underlying values can be helpful in assessing future opportunities and challenges for the international system of human rights protection in a changed world order.

Strategic Studies, an initiative of the Dutch section of Amnesty International, has therefore taken the initiative to launch this series on the human rights diplomacy of rising powers. By collecting critical essays from various scholars, practitioners, and experts on different aspect of rising powers' external policies, this series aims to provide more insight into the implications of global power shifts on the global human rights regime, its norms, principles and institutions, and to contribute to forward-looking strategy and policy formation of those promoting human rights, democracy and the rule of law.

The initial focus of the *Shifting Power and Foreign Human Rights Diplomacy* series is on the role of human rights in the past, present and future foreign policy agendas of emerging democratic powers such as Brazil and now India. The human rights community obviously expects more of these countries in terms of rights promotion than of large authoritarian powers. Furthermore, there seem to be more opportunities for alliances and partnerships with the newly empowered middle classes in democratic powers, where foreign policy elites cannot easily ignore public opinion.

Thirteen academics and practitioners in the fields of human rights and Indian foreign policy have contributed to this collection. Their essays provide different perspectives on India's past, present and – especially – future capacity for shaping the global human rights regime as a rising power, as well as on the challenges and opportunities that lie ahead for international human rights organizations in relation to India's rise. The views expressed in the contributions that follow are those of the authors and do not necessarily reflect positions of Amnesty International, its Dutch section or of Strategic Studies.

### A caveat

While the self-acquired major power status of India offers opportunities for human rights advocates, there are also risks involved in alluding to this image to push India to fulfil a role as an international human rights promoter. First, India's domestic human rights record is

far from perfect. Is India in the position to lecture or assist other countries on human rights, when it is flouting its own human rights obligations at home? If India was to promote human rights abroad, should civil society organizations push such an agenda at all? As one critical thinker responded to our request to contribute with an essay to this publication:

“Human rights promotion by governments, whose own credentials in this realm are deeply flawed, is neither prudent nor ethical, for in the process the discourse and the vocabularies of human rights are flattened out. Human Rights are meant to be weapons of subversion not instruments of domination and modes of intensifying hierarchies in the global order. For this reason, human rights NGOs are best placed to promote the agenda of human rights, provided they are autonomous and do not serve the ideologies of powerful governments”.<sup>2</sup>

Second, invoking this image of India as a global power to promote human rights may help reinforce dominant narratives and agendas that serve the interests of elites at the expense of other, marginalized needs and interests. Will India’s foreign human rights agenda not just serve as a justification for other, less humane, interests, just like Western powers allegedly have advanced their own economic and security agendas in the garb of human rights? As Vijay Nagaraj warns the reader in his contribution to this volume, there are serious social and human costs incurred when India’s major power position is attained through a neoliberal policy agenda and an ethno-nationalist ideology that disadvantages the rights of the poor and minorities.

These are two valid points to consider for human rights advocates when they allude to the major power status of emerging powers to promote human rights abroad via their multilateral or bilateral foreign policy. The interaction between government’s internal and external policy is of crucial importance for the legitimacy and effectiveness of any state’s human rights promotion; when the United States, the EU, rising or resurgent powers do not have their own human rights house in order, or display glaring inconsistencies in their own human rights foreign policy, it becomes easier for recalcitrant regimes to dismiss their criticism.

The fact that human rights can be used as a disguise for other political objectives, hence can be “more part of the problem than the solution”(Kennedy 2002), is another long-recognized challenge for human rights advocates. Merely codifying human rights and strengthening human rights institutions and language is not enough; we also need oversight, accountability and ongoing pressure, persuasion, coercion and support to induce human rights compliance (Risse, Ropp & Sikkink 2013).

Still, one needs power to globalize human rights, including state power. It would be wrong

<sup>2</sup> Email-correspondence with the editors.

to label the 1990s as the “Golden Age” of human rights, as this dismisses ongoing flaws and shortcomings in the international system of human rights protection of that era. Nonetheless, the global human rights regime unmistakably benefited from the post-Cold War era, when global and regional powers backed principles of conditional sovereignty and international oversight, even when this was primarily motivated by national interests or done inconsistently and hypocritically, or both. In an era of rapid power shifts, not only between countries but also between sectors, regions and classes within and beyond countries, this growing norm consensus is no longer a given. Analyzing changes and continuities in the geopolitics that affect human rights will help generating a better understanding of future challenges and opportunities for human rights and the work of (I)NGOs to defend and promote the rights of people worldwide.

### India as a global human rights promoter?

So, based on the different analyses by all essayists, can we expect India to promote human rights consistently and effectively in its future foreign policy? Without aiming to give a conclusive answer to this question, we will provide an assessment of the chances that India will play such a leadership role, based on the contributions by the authors. Our impression is that even though India subscribes to international norms of human rights and principles of democracy and the rule of law, and will probably continue to play a role in thematic standard-setting in UN bodies such as digital inclusion and ESC technology-related rights (see contribution Anja Kovacs Saikat Datta), it will not use its power to defend the current global human rights regime any time soon. Particularly when it feels it is not accorded fitting representation in global institutions, it is more likely that India will reluctantly play the game, while trying to change the rules in the midst of play and starting new games with others.

India’s commitment to human rights is revealed by it being a signatory to various important international human rights treaties. India prides itself as the largest democracy in the world and defends democratic values and the rule of law both at home and abroad. It supports the creation of international institutions for concerted global action to guarantee peace and security and affirms its liberal-democratic identity at the international stage, as shown in the contribution of C. Raja Mohan. Domestically, it has established human rights institutions and commissions and the Indian Constitution gives considerable importance to fundamental rights. But despite progress over time, India has struggled to implement this human rights framework at home. Although Indian human rights diplomacy is less defensive than it was in the 1990s, India continues to be reluctant to protect human rights in the rest of the world (see Sanjoy Banerjee’s essay for changes and continuities in India’s human rights diplomacy).

This tension between, on the one hand, norm adherence and, on the other hand, a reluctance



to enforce norm compliance is reproduced at the international level. India's understanding of sovereignty as state autonomy and non-interventionism figures prominently in all contributions as a key value shaping its foreign policy as well as its human rights diplomacy. While India is willing to promote human rights norms and to strengthen international standards by actively engaging in UN debates on institutions and treaties, its post-Cold War governments have generally shied away from actively defending those rights.

As illustrated in the essays of Matthew Stephen and Rohan Mukherjee on its engagement in multilateral efforts to protect human rights, India often abstains or opposes UN denunciatory resolutions or independent international investigations into the violations of other states' authorities and seeks exceptions for itself in global institutions when they are at odds with national sovereignty. In terms of voting behavior on UN resolutions, India often resembles more the approach of China and Russia than that of other democratic powers like Brazil and South Africa (Ferdinand 2014), making the IBSA grouping so far an unlikely alliance for human rights defense.

Illustrative is India's stance on Sri Lanka which is among the issues discussed by Meenakshi Ganguly. Although India did support UN Human Rights Council resolutions in 2012 and 2013 that demanded an investigation by the Sri Lankan government into state involvement in war crimes, it held steadfast against any external interference in the situation. For when a similar resolution was put to vote in 2014 that sought an independent investigation by the Office of the High Commissioner on Human Rights, India abstained. Another indication of India's reluctance to defend human rights when they compromise political independence of sovereign states is the fact that it has ratified various human rights treaties yet not the optional protocols that would allow individuals in India to file a complaint against the government with international treaty monitoring bodies.

India's emphasis on state autonomy is also displayed by its position on the International Criminal Court (ICC). India played an active role in the negotiations leading to the creation of the International Criminal Court, but abstained in the vote on its Statute and has hitherto not ratified the Rome Treaty establishing the Court. Together with the United States, India objected to, among others, the proposal for an independent prosecutor with wide competence and powers to initiate investigations proprio motu. It did support, however, the general idea of granting an international court jurisdiction triggered by state referrals. Illustrative of India's sovereignty considerations is this official statement by an Indian delegate at the Rome Diplomatic Conference in 1998:

"We can understand the need for the International Criminal Court to step in when confronted by situations such as in former Yugoslavia or Rwanda, where national judicial structures had completely broken down. But the correct response to such exceptional situations is not that all nations must constantly prove the viability of their judicial structures or find these overridden by the ICC."<sup>3</sup>

It would be simplistic to label India's foreign policy as indifferent to international human rights abuses and humanitarian crises. As Kudrat Virk shows in her essay on India's position on R2P, India does not oppose intervention per se – whether military or otherwise – in other states' human rights or humanitarian crises but rather questions the modalities under which it takes place: regulatory regimes of global governance that still reflect the post-1945 world order. India has military intervened, for instance, in East Pakistan and Sri Lanka by invoking humanitarian purposes and participates in peacekeeping and peace-building efforts across the globe. Virk thus argues that India's foreign human rights diplomacy must not merely be understood in terms of a dogmatic preoccupation with sovereignty but rather situated in India's assessment of multiple geopolitical, security and commercial interests.

This explains why India lacks an active foreign human rights policy, while it does have an assertive foreign developmental diplomacy. As shown by Ram Mashru in his essay, India's overseas aid policy consists of technical assistance through which other states can enhance their capacities and skills to address inequality and deprivation. Unlike that of the European Union (see Gulshan Sachdeva's essay on India-EU relations), India's foreign aid is neither attached to human rights conditions nor framed in terms of rights, hence in line with principles of non-interference and sovereignty. In return for its foreign assistance, India aims to receive many economic benefits and regional stability.

Also in the debates on human rights and the Internet, India's stance is shaped by its strategic foreign policy calculations. In their essay, Anja Kovacs and Saikat Datta show that India promotes economic, cultural and social technology-related rights and digital inclusion but is mute on restrictions of rights to freedom of expression and privacy in relation to the Internet. They explain this preference for economic, social and cultural rights over civil and political rights over civil and political rights – still perceived as 'western' – by the strategic partnerships this stance enables with countries whose primary interest lies with development. India's rejection of multistakeholderism in favour of a multilateral approach to Internet governance, moreover, fits its emphasis on the state as being ultimately responsible for furthering 'national interest' and the well-being of the people.

<sup>3</sup> Cited from Garims Tiwara (2013), 'Why India continues to stay out of ICC?' *A Contrario. International Criminal Law*, April 27. Available at: <http://acontrarioicl.com/2013/04/27/why-india-continues-to-stay-out-of-icc/>.

Human rights organizations and other actors that seek to mobilize India into action on international human rights outside its borders must take these strategic interests and values into account. In their essay on the driving forces and constraints towards New Delhi's promotion of human rights abroad, Nitin Pai and Sushant Singh have included the increasing internationalization of India's civil society and their ties with diaspora communities abroad among the drivers they discern. International human rights organizations may want to seize such opportunities to support domestic civil society in shaping India's foreign policy formulation and agenda-setting on external human rights affairs. We hope that the following essays will inspire many readers and help human rights advocates in adjusting their strategies to the challenges and opportunities the emerging multipolar world poses for human rights.

*C. Raja Mohan*

## **India's changing geopolitics and the New Humanitarianism**

*India is unlikely to resolve the growing tension between its liberal identity at home and the traditional reluctance to spread the freedom agenda abroad by tailing the Western debates on intervention and democracy promotion. Instead it is likely to develop a prudent path of its own that recognizes the strategic utility of stronger collaboration with other democratic powers, understands the problems of structuring a balance of power through an ideological framework, and appreciates the difficulties of engineering political change within other societies.*

### **Introduction**

This chapter begins with a review of post-cold war humanitarian discourse and democratic India's defensive approach towards it. If traditional humanitarianism focused on alleviating human suffering, the new variant focused on actively addressing its presumed sources. The new approach in turn demanded extensive intervention in the internal affairs of other societies and generated much concern in countries like India, that were deeply attached to the idea of territorial sovereignty. The chapter explores the prospects for a change in India's approach to international humanitarian organizations as Delhi reorients its great powers relations, especially towards China and the United States, and adapts to its improved standing on the world stage. The chapter teases out the current tension between India's rise as a democratic great power and its reluctance to become a champion of liberal political values abroad. It concludes with the argument that India's identity as a democracy is acquiring greater weight in India's foreign policy as Delhi gets locked in a contest for power and influence in Asia with Beijing and draws close to the United States to balance a rising China.

### **The New Humanitarianism**

The Western triumphalism that followed the collapse of the Soviet Union celebrated two important propositions. One was the thesis that history has come to an end and the other was the argument that territorial sovereignty should matter a lot less in the new era of economic globalization and the common threats confronting humanity. The former suggested that it was a matter of detail how the non-Western societies would adapt to the new and unavoidable imperatives of liberal democracy and capitalism. The latter made the case for a new set of global norms to guide the ineluctable transition to the post-Westphalian world. Although conservatives in the West, especially in the United States, decried this understanding

of where the world was headed, their voices were muted by two factors. One was the absence of a peer competitor to the United States and the inability or unwillingness of a declining Russia and a rising China to contest the American primacy in the international system. The other was the convergence of the left and the right of the American foreign policy community on the proposition that the expansive American power after the cold war can and should be put in moving the non-Western societies towards political pluralism and democracy.

The diminution of great power rivalry after the cold war, the expansion of intra-state conflict in the developing world and the collapse of state structures in many parts, resulted in growing intellectual and policy support for such ideas as nation-building, promotion of democracy and human rights, ending genocide and atrocities against minorities, and preventing the proliferation of weapons of mass destruction. To effectively deal with these new challenges, it was argued, the world needs strong international institutions with the mandate to transcend traditional notions of territorial sovereignty. Empowered supra-national institutions and active non-governmental organizations, it was held, would change the way the international system was organized. Deeply connected to this was a new debate on the use of force in addressing the new threats to international security. The question of when, where and how to use force in a legitimate manner became a major theme of international discourse.

The new discourse generated much apprehension outside the West, including in India. Consequently, non-Western countries were concerned about the emerging threats to territorial sovereignty in the economic domain. Many post-colonial countries that had experimented with different ways of building socialism or explored a possible 'third way between capitalism and communism' had to come to terms with the failures of these alternative models. They now recognized there was no alternative but economic liberalization and globalization. The debates on development continued in the United Nations, within the traditional North-South framework, but became increasingly marginal to the more consequential discourse in the Bretton Woods Institutions located in Washington and the World Trade Organization headquartered in Geneva. For developing states this was not a mere question of choosing a different economic strategy. It involved changing domestic institutions, laws and economic relationships in line with the new norms set by the Washington Consensus. Elites in India recognized that change was inevitable but preferred to set their own pace for reform. Amidst deep domestic divisions on post-cold war economic and foreign policy choices, the succession of weak coalition governments in Delhi between 1989 and 2014 were loath to be seen as acting under Western pressure.

On both the political and economic fronts, the new power of the international institutions was reinforced by the transnational activism of non-governmental humanitarian organizations in the West. Human rights organizations raised Western consciousness on the new challenges by reporting, monitoring and analyzing the multiple crises and civil wars in different

parts of the developing world. Their insistence that Washington must do something found resonance among many sections of American society, from Hollywood to the religious right and generated significant political support for intervention in the crisis zones. The Western humanitarian organizations were not just broadcasting the problems in distant lands. They and the Western governments saw a role for them in shaping the outcome of civil wars and contributing to the post-conflict construction of a new society and state.

If the failure of state structures in the non-Western societies provided the context for the rise of one kind of humanitarianism, the success of the non-Western economies seemed to boost the role of international NGOs. As many states in Asia and Africa began adapting to the new imperatives of reform and gained a foothold in the Western markets, there was a backlash especially from the trade unions that saw the economic globalization shifting jobs away from the developed world to the developing. The second thoughts in the West on economic globalization were reinforced by some of the international NGOs that were concerned with labour rights, environmental standards, and treatment of animals in the developing world. If primitive accumulation in the West occurred more than two centuries ago with no constraints on capitalism, the new humanitarians insist that the latecomers to capitalism don't have that luxury.

Coping with the new humanitarianism added to the multiple challenges that India had to confront at the end of the cold war. The collapse of the Soviet Union saw the disappearance of India's only ally among the great powers. The breakdown of the old economic order at home in the early 1990s demanded a comprehensive overhaul of the Indian economy. The fatal weakening of the Congress party resulted in a series of weak political coalitions in charge of the country since 1989. As India embarked on economic liberalization and globalization, it had to manage the tension between the weak political consensus at home in favour of reforms, and the Western demands for a thorough reorganization of its domestic structures. At the political level, Delhi understood the need and opportunity to restructure relations with America and the West. But Delhi was as deeply concerned about the new demands on human rights, especially the American pressures on India's Kashmir policy that probed democratic India's greatest vulnerabilities.

At home, India did make adjustments, like the setting up of a human rights commission and ordering rights education for its security forces. At the international level, though, India hunkered down to resist what it thought could become precedents for international intervention in India's internal affairs. India was also deeply suspicious of the Western humanitarian organizations and the implications of their activity to India's national security. We need not be detained here by a debate on the merit of these Indian arguments and concerns; but we must note they were shaped by experiences of India's post-independence engagement with the West, which was seen in Delhi as tilting towards Pakistan on the Kashmir dispute.

By the middle of 2010s, the new humanitarianism was under pressure and India's self-confidence was on the rise as the reform era steadily enhanced the nation's power resources and international standing. At the global level a number of factors tended to dampen the exuberance of the post-cold war humanitarianism. One was the decline in popular support in the United States and the West for military interventions. As the US military ventures in Iraq and Afghanistan turned out to be costly and were unable to meet the original objectives, there was little public support for expending of American blood and treasure abroad in support of causes, good or bad. The record of the multilateral interventions, under the UN auspices and beyond it, has not been an inspiring one either.

The tension between the 'interventionist foreign policy community' and an increasingly isolationist populace in America was compounded by intra-elite quarrels on using force beyond borders. George W. Bush's intervention in Iraq in 2003 – justified either as the necessary pre-emption of the threat from weapons of mass destruction or as a venture to promote democracy through regime-change – invited much criticism from within the United States and across the pond in Europe. The objection, it must be noted, was not against the use of force per se. It was about the use of force without UN endorsement. Both unilateralists and multilateralists believed in the plentifulness of American power and the moral imperative of deploying it for 'the good of the world'. The liberals who criticized Bush on Iraq were pressing Washington, less than a decade later, for interventions elsewhere in the Middle East.

Second, declining American support for interventions in itself need not have diminished the case for supranational and subnational activism. But the fact is that the new humanitarians were dependent on American state power to impose punishment against deviant states and individual entities. If declining popular support and the financial crisis of 2008 brought a measure of restraint against the US, the return of great power rivalries limited America's freedom of action at the global level. The 1990s and 2000s saw no real challenge to the new interventionist humanitarian agenda in the international institutions. A downsized Russia and yet to rise China were unwilling to contest America's ability to set the international agenda. That has begun to alter in the 2010s as Russia and China became increasingly assertive vis-à-vis the United States in the UN Security Council. Russia's annexation of Crimea and the crisis in Ukraine brought great stress on the post-cold war understandings between Washington and Moscow in Europe. In Asia, China seems determined to undermine the American primacy in the region, weaken its alliances, and employ muscular tactics in the maritime territorial disputes with the Asian neighbours.

As in the cold war, so in the new era, the United States may no longer have the luxury of ignoring the contestation with other great powers in dealing with the humanitarian agenda. While issues of human rights and democratic values are unlikely to disappear from the foreign policy discourse in the US and Europe, they will have to be increasingly balanced

against the dangers of an expanded confrontation with Russia and China. Even more important, the US will have to come to terms with the limits imposed on its strategic policies by the growing Western economic interdependence with China and Russia. How India relates to this new dynamic among the great powers is bound to have a significant impact on the evolution of great power relations. Although it is the weakest among the major powers, India is widely seen as the swing state that could alter the nature of the balance between the West and the East. It is also the world's largest democracy that could shape the future of the humanitarian agenda.

### **India and the future of humanitarianism**

India has traditionally seen itself as a developing country and a leader of the Third World. Non-alignment and rejection of power politics were long seen as the dominant themes of India's foreign policy. As India campaigned on behalf of presumed Third World causes, the North-South dimension often put India at odds with America and the West. At the national level, the regional balance of power considerations, especially the American warmth towards Pakistan and China in the cold war, made India increasingly reliant on the Soviet Union. Even after the cold war, India did not abandon its partnership with Russia. For Delhi remained wary of Western intentions and long-term policies towards its neighbourhood, even as it made a strong bid to improve relations with the United States.

India's political engagement with the US and the West during the 1990s was constrained by Western concerns about human rights, emphasis on preventive diplomacy in Kashmir and concerns about nuclear non-proliferation. India's nuclear tests of May 1998 brought the tensions to a boil, but they also provided an occasion for a comprehensive reevaluation of bilateral ties between India and the US. If Bill Clinton launched the most substantive security dialogue with India a month after the nuclear tests and became the first president to visit India in 22 years, his successor George W. Bush decisively changed Washington's policies towards Delhi. Recognizing India's virtue as the world's largest democracy and its potential to emerge as a balancer to China in Asia, Bush promoted global nuclear accommodation with India, put an end to American diplomatic activism on Kashmir, dehyphenated the relations with India and Pakistan and promised to assist India in its rise to great power status.

Bush's extraordinary outreach to India thus involved both ideological and geopolitical elements and was summed up in the proposition that India is central to any American strategy to "promote a balance of power in Asia that favours freedom". This policy was largely continued under the Obama administration, despite its vacillations on China and India. As a result, India's engagement with America and the West grew rapidly since 2005. Yet, India remained somewhat cautious in its approach to the United States and the West and insisted on its traditional policy of strategic autonomy. It actively expanded economic engagement with

China, enhanced cooperation in the international forums, worked with Russia and China to create new non-Western forums like the BRICS. India repeatedly affirmed that it will not join an American containment ring against China. At the same time, India was also concerned about potential accommodation between the United States and China and its implications for Asia. As it deepened ties with both America and China, India sought an independent role in Asia and hedged against both China's rise and America's potential weakness. This approach was often conflated with a reinvention of non-alignment and traditional reluctance to be drawn into great power politics. Yet the rise of India's own capabilities is likely to ensure that India's future approach to geopolitics will not be a simple replay of the past. It will involve the resolution of new tensions between its rising power potential and growing pride in its democratic identity on the one hand, and the traditional conceptions of state sovereignty, strategic autonomy, and the quest for a multipolar world on the other.

### **Democratic identity**

Non-alignment and a seemingly absolute notion of territorial sovereignty have long defined the image of India's foreign policy and put Delhi at odds with the new humanitarian agenda. Yet, this was not always true of contemporary India's worldview. Thanks to an extended national movement led by lawyers and teachers, the early leaders of independent India had a strong commitment to democracy and rule of law at home and to international law beyond borders. They also strongly supported the construction of strong international institutions as an alternative to power politics that brought the two world wars in their lifetime. India's commitment to collective security was reflected in Jawaharlal Nehru's decision to take the Kashmir dispute with Pakistan to the United Nations. India's commitment to humanitarianism was reflected in the strong support that Nehru extended to the drafting of the Universal Declaration of Human Rights and the campaign he launched at the United Nations against South African apartheid.

Independent India's idealism would soon lead to disappointments and inoculate the political establishment in Delhi against illusions of collective security. The Kashmir issue became part of the cold war power play at the UNSC and Delhi has since sought to exclude the UN from any of its territorial disputes. On human rights, decolonization and apartheid, India saw the former European colonial powers argue for undiluted territorial sovereignty. Within its neighbourhood and beyond, India found the Western powers aligning with authoritarian regimes and promoting military coups in the pursuit of their cold war rivalry with the Soviet Union. Even when great human tragedies unfolded, for example in East Pakistan and Cambodia, India saw the West put geopolitical interest above humanitarian concerns.

It was therefore not easy for India to accept on face value the post-cold war Western proclamations of humanitarianism. Nor was it going to let the Western NGOs and passing political

fancies in North America and Europe define how India must go about nation-building. Yet the post-cold war period saw India steadily affirm its democratic identity on the international stage, not to substitute its traditional image as a non-aligned country, but to complement it. The Atal Bihari Vajpayee government joined the U.S. led Community of Democracies initiative. It also set up the IBSA (India, Brazil, South Africa) forum as a grouping of democratic developing nations. The UPA government led by Manmohan Singh supported the UN Democracy Fund and backed Tokyo's proposal in 2006 to 'create a democratic quad' in Asia consisting of India, the United States, Japan and Australia. The idea, however, did not survive long amid Chinese protests. While the UPA government, in its second term, was reluctant to affirm its democratic identity and the possibilities it opened up for strategic cooperation with the US and its allies, the Modi government seems more open to the idea. In its engagement with the US and its allies in Asia, Modi has repeatedly emphasized the importance of shared democratic values and has downplayed the traditional references to non-alignment and strategic autonomy. Modi's India appears to be more self-confident about the nation's prospects and more comfortable in partnering with the West.

### **India as a rising democratic power**

Looking to the long-term, India's relationship with the Western governments as well as humanitarian organizations is bound to evolve from a defensive to a more collaborative orientation. Two factors are making this possible. One is the fact that India is today more comfortable with Western governments and is steadily integrating itself with the Western economies. During the cold war India was the only democracy outside the Western economic system and alliances, and one of the biggest critics of the United States in international forums. Shared political values and aligned geopolitical interests, like a stable balance of power in East Asia and the Middle East, are likely to draw India steadily closer to the US and the West.

Second, while the traditions of anti-colonialism and Asian solidarity as well as the new opportunities for economic cooperation will continue to draw India close to China, the territorial dispute and the growing competition for influence in Asia and the Indian Ocean limit the prospects for India's alignment with China against the West. India certainly values multipolarity at the global level; but maintaining multipolar Asia amidst the rise of China is a far more important objective for India. Collaboration with other Asian democracies like Japan and Indonesia is crucial in balancing the rise of China; but India is unlikely to make democracy a criterion for its partnerships. After all, communist Vietnam is as crucial for India as democratic Indonesia in building a stable regional balance of power.

Although India's relationship with the Western governments has significantly improved, Delhi remains rather wary about international humanitarian organizations. Yet it is possible to envisage a more cooperative engagement between the two in the future. The return

of geopolitics and experience from the recent interventions have begun to compel some introspection among the new humanitarian formations in the West. Meanwhile, as a rising democratic power, India may have to reclaim some of its original humanitarian ideals. For the turbulence in the Subcontinent and the extended neighbourhood have a great effect on India's security and prosperity. The rise of strong indigenous NGOs that can bridge the current tensions between Delhi and global humanitarian discourse may be critical for a change in India's approach. A bit more modesty among the new humanitarians and a little more commitment in Delhi for promoting democracy in its neighbourhood could bring the international NGOs and India in greater alignment with each other.

*Sanjoy Banerjee*

### **Human rights diplomacy and performance of a rising India since 2000**

*Although Indian human rights diplomacy is less defensive than it was in the 1990s, India avoids responsibility for protecting human rights in the rest of the world. Its skepticism of the international human rights regime means that India is likely to continue opposing the expansion of jurisdiction of international human rights institutions and the attenuation of national sovereignty in the process. It will continue to support specific international initiatives and interventions on a case by case basis.*

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#### **Introduction**

After the turn of the century, Indian human rights diplomacy became less defensive than it had been in the 1990s, but assiduously avoided responsibility for protecting human rights in the rest of the world. India continued to view the existing international human rights regime with skepticism, and avoided actions that would weaken state sovereignty. These attitudes reflect India's risen but still modest position in the global state power ranking, its problematic human rights record at home, its fear of abetting Western interventions it opposes, its very low voting strength in the UN compared to its population, and the limited capacity of Indian society and state to influence media and discourse outside its borders.

Since 2000, the Indian government has maintained a silence on international human rights issues, even where there were strong domestic societal sentiments that rights were being violated. In 2003, the US and some of its allies invaded Iraq. Multiple estimates of civilian casualties during the Iraq war exceeded half a million, with US and allied actions held responsible for over a third. While India objected to the invasion and the tactics employed, it, like other states, did not raise human rights criticisms in that regard. In Pakistan, the militant movements promoted by the Pakistan Army to attack India in Kashmir and elsewhere developed a domestic orientation. These militants began to regularly kill ordinary Shias, Ahmadiyas and members of other religious minorities. Indian society observed all this with attention, yet the state remained silent. It had not always been so. After independence, India emerged as a leading diplomatic voice criticizing continuing European imperialism, as well as apartheid in South Africa. But after the 1990s, India turned away from human rights advocacy (Banerjee 2000).

To understand the paradoxes of India's international human rights policy we must examine its broader foreign policy objectives and its domestic human rights situation. We will see

why India does not raise human rights issues even where violations are taking place and criticism would align politically with India's other foreign policy goals.

### **Indian foreign policy on human rights since 2000: silence and reluctance**

India has refrained from criticizing other states for human rights violations in the period under review. This is true even when Indian media and society strongly perceived large-scale human rights violations. Two notable silences of the Indian state were in relation to the US intervention in Iraq and the rise of fundamentalist violence against civilians in Pakistan. In the case of the US invasion of Iraq, Al-Jazeera video feed in Indian media showed the civilian casualties that directly resulted from US action. Epidemiological studies show that over half a million civilians died in the war initiated by the United States, with a third the direct result of US and allied action (Hagopian et al. 2013). Attentive segments of Indian society argued that even deaths due to actions by al-Qaeda affiliates entailed US responsibility, since the US had overthrown the Saddam Hussein government, which had kept such forces out of Iraq and had in its last decade avoided large-scale civil violence. The silence of the Indian state in this situation can easily be explained by the overwhelming power of the United States. Virtually all states, including US allies otherwise assertive on human rights, were silent on the large scale of civilian deaths in Iraq.

The Indian silence on the human rights situation in Pakistan cannot be accounted for by the same explanation. Despite India's political hostility toward Pakistan, it has mounted no diplomatic campaign of human rights criticism toward it. Except in a few areas containing less than five per cent of the population, there is no civil war-like situation in Pakistan. However, certain domestically-oriented militant organizations have declared Shias, who form approximately one fifth of the population, "fit for killing" due to their religious beliefs. Individual Shias, who are not engaged in any political activism, are being targeted and killed. The Pakistani state has taken some enforcement actions against anti-Shia militants, but these remain limited in relation to the scale of the violence and the armed strength of the state. Regular one-sided violence has also occurred against other religious minorities in Pakistan. Yet India has mounted no direct critique of the human rights situation there. The Indian state rarely criticized the Pakistani state for negligence in regard to these domestic militants, even as numerous societal activists and observers in Pakistan and India frequently did.

India continues to value sovereignty as the primary global condition for the defence of democratic rights and possibly human rights themselves. The wave of post-colonial sovereign states emerged in response to the crisis of imperialism and these states promoted sovereignty as a moral response to imperialism (Reus-Smit 2001). The Indian political discourse strongly valued sovereignty and decried external interference in Indian domestic affairs as a violation of democratic principles. India also viewed with skepticism the commitment of

Western states to the principles of human rights and democracy in light of both colonial-era and post-colonial experiences. The concentration of global power in the West after 1989 only intensified India's valuation of the principle of sovereignty. India's main concern has been not with the human rights principles themselves, but with the adjudication and enforcement of human rights norms by global institutions and great powers. The massive loss of innocent lives both in the sanctions on Iraq (Banerjee 2000) and in the war in Iraq reinforced India's skepticism about international human rights institutions dominated by Western states. World power is diffusing and it is possible that a qualitative change in global power structures, great power attitudes, and international institutions would occur in a few decades. Until then, India is likely to resist expansion of international jurisdiction on human rights at the cost of state sovereignty.

### **Indian foreign policy on terrorism and human rights: the contrast**

A very energetic Indian foreign policy line has been its diplomatic campaign against terrorism emanating from Pakistan, appealing to the international anti-terrorism regime. Before the 9/11 attacks, Delhi had worked to extend the anti-terrorist regime to cover groups operating from Pakistan against India. India focused its diplomacy against militant groups politically aligned and operationally connected to the Pakistan Army and its intelligence wing, Inter-Services Intelligence (ISI). After the 9/11 attacks, India strongly supported US efforts to strengthen the international anti-terrorist regime. Indian anti-terrorism policy in relation to Afghanistan has been even more consistent than that of the US itself. While the US classifies the Afghan Taliban as terrorists and has fought a war against them, the US has persistently resisted acknowledging the connection between the Afghan Taliban forces and the Pakistan Army and ISI. US officials have acknowledged the connection publicly on some occasions, such as when the then top military officer, Admiral Mullen, before the US Senate called the Haqqani Network a "veritable arm of the ISI". Yet this fact is not referenced consistently in American diplomatic speech in relation to Pakistan. The Indian government has, perhaps ironically, been more consistent than the United States in criticizing the support from the Pakistan Army to the Afghan Taliban.

While India has campaigned assiduously to strengthen the international anti-terrorism regime, it has taken virtually no initiatives to strengthen the international human rights regime. This combination of policies has persisted despite changes of ruling coalitions. Both international regimes have been disproportionately dominated by Western states, NGOs, and media discourses. However, while the anti-terrorist regime had neglected Indian concerns before the 2001 attacks in the US, terrorist organizations in Pakistan targeting India increasingly came under the ambit of anti-terrorist policies of Western governments and the United Nations afterwards. This has increased Indian confidence in the international anti-terrorism regime.

The international human rights regime is viewed with far greater trepidation in India. There is residual fear in India of criticism of India's domestic record from intergovernmental human rights institutions and from Western governments and NGOs. These fears were stronger in the nineties when India was more vulnerable to foreign pressure, but they have not disappeared despite India's political and economic ascent. Another cause of India's reticence is its disapproval of major Western military interventions in the name of human rights. India did strongly support the US intervention in Afghanistan in 2001, arguing that it was an act of self-defence and also served the cause of human rights. Conversely, the Indian government has repeatedly criticized Western interventions that were not current self-defence and that did not, at least not in the government's reading, advance the cause of human rights. There has been a fear that the existing international human rights regime tended to facilitate such interventions. This promoted India's reluctance to strengthen these institutions.

### **Domestic human rights performance to explain India's foreign policy**

It is impossible to understand India's or any other country's international human rights policy without looking at how it exercises its own domestic authority, including state practices that protect or violate human rights. We should examine how the state fulfills its human rights responsibility in relation to societal crimes that would amount to human rights violations if not vigorously punished. Such fulfillment may entail some political costs to the leadership, so we can see if Indian leaders have been willing to pay those costs to uphold human rights. The largest question about the Indian state's handling of domestic human rights and its potential culpability in human rights violations involves societal crime aligned with social prejudices, particularly those of gender, caste, and religious community. The human rights responsibility of the Indian state is to punish such crimes with full recognition that the motivation derives from discourses in segments of society, small or large, supporting the prejudices in question. Since independence, the Indian state has made some efforts in this direction. Tough legislation has been passed prohibiting practices of untouchability against Dalits, and it has been vigorously enforced. Indian politics afforded a wave of Dalit empowerment in the period under review. During 2007-2012, a Dalit-led and Dalit-centric party, the Bahujan Samaj Party, ruled India's largest state, Uttar Pradesh, with an absolute majority in the state assembly.

India has also passed and enforced legislation to prevent and punish violence against women in the form of bride killings, with moderate success. Legislation aimed at prosecuting murders in the context of dowry situations in 1986 also shifted the burden of proof against the husband and his family if the wife died, once dowry demands were proven. There was no significant political opposition to this legislation at the time. The full prosecutorial burden of proving murder was lifted. In 2013 there were more than 200,000 arrests for dowry harassment or murder, with a 16 per cent conviction rate (Washington Post 2014). The problem of false complaints has been found to be significant. However, dowry murders persist at about 8000 annually.

Another major social crisis in India which the government has tried to tackle is the imbalanced child sex ratio as a result of sex selective abortions. The percentage of girls among children ages 0-6 has dropped sharply in the last two decades. This drop is caused by sex selective abortions, now easily available due to the spread of ultrasound machines. A number of laws and measures have been used to counter this trend, with little success to date.

Of special importance is the question of how the Gujarat state government responded to the riots of 2002 in which 790 Muslims and 254 Hindus died (Express India 2005), since the then Chief Minister of Gujarat, Narendra Modi, is now the Prime Minister of India. No analysis of the Modi government's policy on international human rights is adequate without a clear understanding of the efforts his Gujarat government made to stem those riots. The state government of Gujarat, under the leadership of Narendra Modi, has been criticized severely for its performance in the riots, within India and internationally. Amnesty International and Human Rights Watch criticized the performance of the Modi government in the riots, and the United States banned Modi from entry until shortly before he became Prime Minister. Accusations of malfeasance during the riots have ranged from negligence to complicity by the Gujarat Police, and beyond.

If we conclude that Modi stands guilty of the accusations against him, it would follow that he does not believe in any broad conception of human rights and the prospects for sincere Indian action in support of such principles would be dim. Furthermore, any international activism by India in support of human rights would require a modicum of credibility of India's commitment to an internationally shared conception of human rights. A track record on the part of the head of government of gross violation of human rights would undermine such credibility. I shall argue while numerous members of the Gujarat Police under Modi did commit crimes of complicity, the police as a whole did take vigorous action to stem the riots. The anti-riot efforts of the Gujarat Police, particularly against Hindu rioters, surpassed that in any other riots since independence.

The riots began on 27 February 2002 when carriages of a train filled with Hindu pilgrims caught fire while pressed on two sides by a crowd of Muslims from the town of Godhra, and 57 passengers died. By 28 February large-scale mob violence commenced, mainly by Hindus against ordinary Muslims who were in no way involved in the Godhra train fire. Human Rights Watch (2002) argued persuasively that Gujarat Police personnel were complicit with the rioters, especially on the first day of major rioting.

When rioting began there was a genuine shortage of police forces compared to the number of rioters. In the state capital of Ahmedabad, which saw the greatest violence, on 28 February 2002 there were 6000 police available, of whom only 1500 were armed. There were an additional 530 armed personnel in the state, a quarter of whom were available for Ahmedabad. At one point on that day there were mobs totalling over 25,000 across the city. Modi called on



28 February for the national army to be deployed. The first army contingents arrived before dawn the next day (India Today 2002). Within the city of Ahmedabad itself, rioting was brought to a halt after three days, however killings amounting to about 40 per cent of the total continued in the rest of the state, including in rural areas. Through the month of March 2002, when the most intense rioting happened, Gujarat Police shot dead 60 Hindu and 40 Muslims rioters. Furthermore, the Gujarat Police arrested 9954 Hindus for rioting, and preventively arrested 17,947 Hindus. Smaller numbers of Muslims were also arrested on similar grounds (Times of India 2002). The police shootings in March are the most intense police firing on rioters recorded since independence and the largest scale of police killing of Hindu rioters. In April, the number of Muslims shot dead by police for rioting was higher than the number of Hindus. There were lapses and crimes committed by members of the Gujarat Police, however on aggregate police force did make a stronger anti-riot effort as compared to other major riots, such as the 1992-93 riots after the destruction of a historic mosque in the Hindu holy city of Ayodhya, the 1984 anti-Sikh riots after the assassination of Indira Gandhi, or the 1969 Hindu-Muslim riots in Gujarat itself.

A state cannot gain international credibility for its human rights policy without demonstrating a commitment to upholding human rights within its own sphere of authority. The foregoing facts reveal the attitude toward human rights across the Indian political spectrum. There have been some successes. Nonetheless, there remain strong practices within Indian society violating rights on the basis of gender, caste, religion and other grounds. The clash between private motives and public commitment is persistent. To an extent, the state has preserved a commitment to human rights, but its success has been limited. All this gives the Indian state only limited credibility in the international human rights discourse.

### **The future of India's human rights foreign policy**

While the Indian state and national political discourse have shown a commitment to the principles of human rights, India has been reluctant to use its diplomacy to promote this cause internationally. There was a brief bout of activism after independence. In the 1950s, India led the diplomatic charge against apartheid in South Africa and against continuing European imperialism. Indian activism against apartheid continued until its end. But especially in the 1990s, India moved toward a defensive stance in its human rights diplomacy, fending off accusations from Western countries, Pakistan, and some other Muslim countries (Banerjee 2000). The intensity of accusations against India has diminished sharply after 2000, but the country has been left with a skepticism about the international human rights regime.

India's skepticism about the current international human rights regime is rooted in a number of fears. First, India's domestic human rights situation remains problematic. There are public efforts to suppress or transform private motives of major segments of Indian society on

matters such as sex-selective abortion or dowry murders, but results are not satisfactory. This makes India vulnerable to human rights criticism that is politically embarrassing to ruling parties, and even corrosive.

Second, the international human rights discourse, especially in its informal and media components, continues to be dominated by the West. The Indian state and society regard with skepticism Western human rights NGOs and Western governmental human rights diplomacy. That Narendra Modi came under personal sanctions in the United States despite substantial efforts of his government to stem the 2002 riots will remain a basis of such skepticism.

Third, India is also skeptical of the United Nations system with respect to human rights. India's representation within the organization remains weak, with only a single General Assembly vote assured. On per capita basis, India has the weakest representation of any country in the UN.

And fourth, since the end of the cold war, India has opposed multiple Western military actions against established states that the intervening states justified on human rights and other grounds. India opposed Western efforts to support the partition of Yugoslavia in the early stages of that crisis, strongly opposed the US attack on Iraq in 2003, and opposed Western intervention in Libya in 2011. In the case of Libya, Western countries intervened based on a UN resolution but proceeded to act far beyond the boundaries of that resolution. These interventions, at least in the short run, led to worse human rights conditions than had prevailed in these countries before. The US action in Afghanistan, following the 9/11 attacks, on the other hand, was an instance of self-defence and received enthusiastic Indian support. These interventions and their results have led India to view current international human rights institutions with trepidation. India views the doctrine of the Responsibility to Protect, for example, as highly susceptible to abuse (see the essay of Kudrat Virk in this volume). India holds this skepticism despite having itself undertaken military action on similar grounds, principally in 1971 to liberate Bangladesh. Between India and the West there is not much disagreement about what rights humans have as a philosophical matter. The disagreements have come in the characterizations of particular situations and in rights of states to intervene within other states.

All these concerns have led to India's skepticism about existing international human rights institutions. India's future attitude depends on the evolution of the global political order. If India enjoys accelerated economic growth, this would place it in a stronger position in international politics and that would lead Delhi to take a more confident approach to human rights institutions. If there is a decline in the West's tendency to promote regime change unilaterally, India's concerns would be mitigated and a greater Indian willingness to support international human rights institutions would follow.

**Promoting human rights in the Indo-Pacific:  
Prospects, drivers and constraints**

*India can be a partner to governments and organizations seeking to promote human rights in the Indo-Pacific region. Unlike most other powers in this region, the Indian republic has the values, instruments and capacity for the task. In the past, New Delhi has acted forcefully to prevent genocide and atrocities against civilians. It has also overlooked glaring human rights abuses in its neighbourhood. In a brief attempt to understand why, and to estimate what positions India might take in the future, this essay explores the motivations, instruments, driving forces and constraints towards human rights promotion across its shores.*

**Three regions, three narratives**

There are three broad human rights narratives across the Indo-Pacific, corresponding to its main regions. The Islamic religious narrative tends to dominate the discourse in the Middle East, contending that liberal values must remain circumscribed by and subject to strictures of Islam. While this is resisted by many segments of civil society, including liberals, religious minorities, women's rights groups and environmentalists, few regimes in the region enshrine human rights in their domestic policies. When they are concerned about human rights, it is either to protect religious sensibilities, or to highlight political causes around the world – like the Palestinian territories or Kashmir – where Muslim populations are involved.

On the eastern reaches of the Indo-Pacific, a number of authoritarian regimes promote a narrative of making human rights – especially political freedom and civil liberties – subservient to economic development and political stability, until the time is right for liberal democracy. Once floated by South-East Asian establishments as “Asian Values”, this narrative has a contemporary champion in China. If political rights are deprecated at home, the principle of non-interference in the internal affairs of other states is cited, and human rights abuses abroad are overlooked. Human rights and their advocates are treated with suspicion by the regimes and the elites, a sentiment that might even be shared by many other segments of society.

Between these two regions and their narratives lies the Indian subcontinent, a region whose human rights narrative is dominated by the values of the Republic of India. In 1950, the Constitution of India enshrined fundamental rights, universal suffrage, proactive pursuit of equality and parliamentary democracy in a way that was ahead of its times. With the new

Indian republic, under Jawaharlal Nehru, making human rights an important part of the foreign policy agenda, the policies of countries of the subcontinent were heavily influenced by, and seen in relation to, those of India. Such a state of affairs continues to this day: human rights have normative legitimacy in the subcontinent, and where countries deviate from these norms – for instance, in the recent case of the Sri Lankan government's treatment of its Tamil population after its defeat of the LTTE – their departures are measured with reference to the human rights norms of liberal democracies.

In other words, largely due to the Indian republic's structure, the only region in the Indo-Pacific where human rights have normative legitimacy is the subcontinent. The goal of human rights promotion in the subcontinent is therefore to make the policies and practices of India and its neighbouring states match up to those norms. In contrast, in both the Middle East and East Asia, the human rights promotion project involves the more basic task of persuading the elite and perhaps even the masses, of the legitimacy of human rights norms.

This essay will first examine what motivates Indian governments to include human rights in New Delhi's foreign policy. It will then identify what instruments India can use to promote human rights, before discussing the drivers and constraints of pursuing such policies. It is important to recognize that especially in the area of human rights, what 'India' does is more than what the Indian government does: civil society groups, religious organizations, media, corporations and individuals too are foreign policy actors in their own right. Although foreign policy is a prerogative of the Union government in New Delhi, state governments have a stake and sometimes do play an important role in matters concerning human rights in neighbouring countries<sup>1</sup>. This essay, however, limits itself to the foreign policy of India's Union government.

### **A matter of national interest**

India's governments have seen the issue of human rights promotion from the lens of their perception of the imperatives of national interest. Nehru's promotion of universal human rights might well have had a strong idealist bent, but it is also true that taking moral positions in foreign policy helped a weak, newly independent India to punch above its weight in international relations. Indira Gandhi's 1971 intervention in East Pakistan is the first of the very few instances of foreign interventions that actually prevented a genocide. Its primary motivations, though, had a firm footing in realpolitik. The Rajiv Gandhi government's forceful interventions in Sri Lanka, Nepal and the Maldives were as much attempts to ensure India's predominance in the subcontinent as they were acts of idealism.

<sup>1</sup> The state government of Tamil Nadu has been a strong defender of human rights of the Tamil population in Sri Lanka. It has weighed in heavily in New Delhi's policy towards Sri Lanka, provided refugee camps and influenced India's vote at international fora, including the UNHRC.

Since 1991, the governments of P.V. Narasimha Rao, Atal Behari Vajpayee and Manmohan Singh emphasized economic engagement, especially with East Asia, consistent with the broad consensus that pursuit of economic growth is the primary national interest. This frequently resulted in setting aside the issue of human rights: from Myanmar and China throughout the 1990s, to Sri Lanka in the 2000s, to instances further afield. Although India was a founding member of the UN Human Rights Council in this period, New Delhi (like Washington and other Western capitals) did not attempt to shape the new organisation's norms and values, resulting in a less-than-satisfactory outfit.

The Modi government was elected largely on a prospectus of further economic growth and development. The growth imperative is likely to remain paramount over the next few decades (see also the essay of Vijay Nagaraj in this volume). Yet, it would be incorrect to conclude that New Delhi's approach towards human rights promotion will be a continuation of the past two decades. This is because the growth imperative involves a broad foreign policy agenda that seeks a conducive external environment; a favourable global balance of power; addressing transnational problems like terrorism, epidemics and climate change; and politically acceptable settlements of territorial disputes. Each of these has a human rights dimension which New Delhi could adopt and employ in the conduct of its foreign policy.

Therefore, to the extent international human rights issues are framed as being consistent with India's foreign policy goals, New Delhi is more likely to embrace them. India is a pro-human rights power and, at the margin, a promoter of human rights<sup>2</sup> in the Indo-Pacific. While New Delhi is unlikely to gratuitously take on China or the Gulf Arab states over human rights issues, it is likely to do so if that advances its interests. Unfortunately, activists, public intellectuals and the media do not invest enough in framing issues to appeal to New Delhi's interests, overly relying on a formula of appealing to altruism, putting policymakers on the defensive, or worse, antagonizing them.

### **The human rights promotion toolbox**

A government has three sets of tools that can be used to promote human rights: intrinsic, instrumental and 'social'. Intrinsic tools involve their own character, endowments and foundational values. Instrumental tools are memberships of multilateral institutions, diplomatic levers, economic power, military capabilities, demographic characteristics and so on that can be utilized to achieve specific policy objectives. The last category includes the ability of governments to accord (or deny) admission to international forums, status to other governments, leaders, officials and businesses.

<sup>2</sup> India's military intervention in East Pakistan in 1971 and in Sri Lanka in the late 1980s have a strong human rights dimension. Indeed, the Indian Army prevented the Pakistani government's ongoing campaign of mass murder from becoming a full-fledged genocide.

*Intrinsic: By being India*

As we have discussed above, the very existence of the Republic of India as a liberal democracy has the effect of promoting human rights in its neighbourhood and across its shores. Despite its imperfections and shortcomings, India destroys almost every argument that can be offered against the adoption of human rights by countries in the Indo-Pacific. Religious diversity, income inequality, low levels of education and economic development are all offered at one time or another, by one non-democratic regime or another, as reasons to delay instituting a liberal democratic order. The Indian example was always troublesome for those who make these arguments, but became even more so after the 1991 reforms put the economy on a high growth path. To the extent that India remains committed to its foundational values, strengthens its institutions and sustains healthy economic growth, it promotes human rights across the world simply by being itself.

*Instrumental channels*

While New Delhi possesses a number of instrumental tools to promote human rights, from its membership of the G-20, East Asian Summit, the South Asian Association for Regional Cooperation, to possessing one of the most powerful naval forces (albeit with limited expeditionary capabilities) in the region, the use of these is heavily circumscribed by other geopolitical priorities. India, and indeed the United States and other Western powers, calculate that engaging Middle Eastern and East Asian countries in regional security and trade arrangements is more important than letting human rights issues derail them. This position is likely to persist through the next couple of decades.

This does not, however, preclude quiet diplomatic interventions from New Delhi to resolve particular cases concerning violations of human rights.<sup>3</sup> Given its engagement with overseas Indian communities, the Modi government could get involved in cases of human rights violations concerning them. Prospects for India to play a stronger instrumental role increase with the rise of per capita income, the development of civil society organizations interested in foreign affairs and the internationalization of the Indian media.

*Social: rehabilitating, excommunicating and ducking*

New Delhi has not adequately recognized the utility of socialization of regimes and leaders as a foreign policy tool, and certainly not for promoting human rights. Now, both proposals to impose international sanctions and to create a 'concert of democracies' fatally ignore considerations of realpolitik. However, there is plenty of space between these two extremes for New Delhi to recognize, reward and punish regimes and leaders based on their commitment to human rights. Awards, prizes and recognition at various levels by the Indian government

<sup>3</sup> For instance: Myanmar, Bangladesh, Nepal, Bhutan and Sri Lanka. In each case, India has taken it up with them diplomatically, without making a public show of it.

can advance the cause of human rights without necessarily undermining bilateral relations. India faces a dilemma when called upon to vote in resolutions or sanctions against regimes it must engage for reasons of realpolitik, but who must be punished for their human rights violations. The usual response has been to strike a middle path, "supporting the evolution of human rights and democratic norms, but exercising caution in the manner of their implementation" (Pai 2013: 303-318).

At the moment, it is in New Delhi's interest to duck the question to the extent possible, and let the permanent members of the UN Security Council shoulder the moral burdens and the costs of punishing human rights violators. In fact, it is in the interest of the world's liberal democracies to expose the failings of the UN Security Council and the UN Human Rights Council, from their structure to their agenda, so that they might be reformed. That said, India cannot forever avoid having to take firm positions either way, as the tension between values and interests will only intensify in the future. India is more likely to become a rule-taker to the extent that it is accommodated into international rule-making structures, including a reformed United Nations.

The broad path New Delhi will take on human rights and foreign policy and the positions it will take on specific issues are best seen as the political resultant between drivers and constraints.

**Drivers - why New Delhi might take up the cause**

The principal drivers that push New Delhi's foreign policy to take an interest in human rights abroad are the level of internationalization of Indian society, Internet-driven mass interconnectedness, linkages with domestic politics and, if it emerges, doctrinal vision of India's political leaders.

*International exposure*

Public discourse in India is overwhelmingly focused on internal affairs. Foreign causes unrelated to domestic politics do not move citizens and groups to demand that New Delhi take strong positions or action. This is changing as broader sections of Indian society engage with the external world: the number of Indian investors, corporations, business people, expatriate workers, tourists and students abroad is growing and the effects of this are reaching deeper into society. With the growing awareness and interest in world affairs, the likelihood that public discourse will take up foreign issues is higher. Given India's self-image as a liberal democracy, we can expect civil society to acquire a stronger voice in India's foreign policy positions, especially on human rights.

*Networked societies*

Internet and mobile telephony have already transformed India's domestic political scene. Social media identify issues, frame the debate, channel public opinion and influence the

positions that political leaders take. While the discourse is largely domestic, the mechanisms for connecting an issue to a political position have been established. The same mechanisms can take up foreign issues, not least because of the mass interconnectedness of the Internet. Interconnectedness alone will not drive Indian citizens to push their government to promote human rights abroad: it needs a sufficient number of influential people to take up and champion the cause. The internationalization of Indian society is one reason people might embrace human rights causes; linkage with domestic politics is the other.

#### *Kinship*

In contexts where there is a direct linkage to India – treatment of Indian diaspora, ethnic counterparts, expatriates or vulnerable groups – the pressure on New Delhi will be the greatest. Over the past decade, the Indian government has institutionalized its outreach to overseas Indians, courting them for business, tourism, investment and ‘soft power’. Such engagement will, in turn, raise the expectation that New Delhi will intervene when their human rights are at risk. This is new territory for foreign policy, as earlier governments had studiously avoided intervening (beyond the subcontinent) on behalf of non-citizens, despite their ethnic Indian origins.

#### *Leadership?*

Nehru apart, India has seen few political leaders with both political authority and a visionary internationalist outlook. It is too early to tell, but Narendra Modi’s statements on India becoming a ‘vishwaguru’ (or world preceptor) might indicate that he has an international vision to match his domestic popularity and political power. If this is indeed the case, he might set foreign policy in directions that promote values that include tolerance, pluralism, non-violent settlement of disputes, albeit presented from a different angle.

### **Constraints on including human rights in the agenda**

There are, however, far more constraints to India’s promotion of human rights across its borders. Chief among them are a paradox of proximity concerning the neighbourhood; realpolitik; structure and norms of the international system; capacity (in multiple dimensions); and domestic political economy.

#### *Paradox of proximity*

There are structural reasons constraining India’s ability to intervene in its immediate neighbourhood. The logic of the Partition makes intervention on behalf of ethnic and religious minorities in Pakistan and Bangladesh a vexatious problem, and entangles with wider bilateral disagreements. Giving refuge to exile Tibetans, the Dalai Lama and the Central Tibetan Administration limits the positions New Delhi can take with respect to China’s treatment of Tibetans. There are similar problems with respect to Sri Lanka, Nepal and Myanmar. Fu-

rthermore, neighbourhood policy is shaped by a large number of agencies across federal, state and sometimes even district levels, each with different political motivations. Paradoxically, therefore, New Delhi is acutely constrained from promoting human rights across its immediate borders.

#### *Realpolitik*

Ongoing shifts in the global and regional balance of power are the second source of constraints to Indian foreign policy. New Delhi must engage in East Asia to balance China’s growing imprint in the subcontinental neighbourhood. It can neither change its neighbours nor be too choosy about its partners. Regimes in Sri Lanka, Myanmar, Maldives, Nepal and Pakistan are aware of this and have demonstrated they can play one power off another. A similar but more complex dynamic is extant in the countries of the Middle East, where a large number of Indians are employed. Human rights considerations take a back seat to realpolitik.

#### *From the system*

Third, the international system imposes constraints that can deter New Delhi’s governments from taking strong positions and timely actions. International institutions like the UN Human Rights Council and the International Criminal Court, and principles such as the Responsibility to Protect (R2P) essentially reduce New Delhi’s own incentive to do something in the region where its interests are not directly at stake. Why bother too much when it is the international community’s problem? Why not wait for the international community to work out what to do? One important consequence of the international system arrogating human rights issues to itself, is that countries like India are more concerned with protecting their interests in the multilateral jostling than with the issue itself.

#### *Capacity*

The fourth constraint arises from state capacity: New Delhi can act only to the extent that its diplomatic, economic and military capacity permit. The shortages are acute, and there is a limit to what thinly staffed, overstretched foreign policy establishments can fruitfully engage.<sup>4</sup> For the foreseeable future, capacity constraints are almost binding, as the government finds itself unable to radically add capacity even as the demands upon it grow exponentially.

<sup>4</sup> India’s diplomatic corps consists of around nine hundred Indian Foreign Service Grade-A officers. The numerical strength is small not only in the context of India’s geographic size and its 1.1 billion population. This compares poorly not just to the over 20,000 deployed by the United States, and the large diplomatic corps of the European powers – UK (6,000), Germany (6,550) and France (6,250) – but also to Asia’s largest foreign services, Japan (5,500) and China (4,200).

### *Political calculus*

Finally, New Delhi's positions on international human rights issues cannot escape how their image plays out in domestic politics. There is little in India's electoral calculus to make political leaders take bold positions on issues that do not directly impact the country. Moreover, faced with attacks and criticisms by human rights activists on India's domestic policies, political leaders are reluctant to heed their calls on issues elsewhere in the world. The relationship between India's law-enforcement and security agencies on the one hand, and human rights organizations on the other is quite often dysfunctional. To the extent that this remains the case, few politicians will see rewards in a co-operative relationship with human rights organizations.

### **Conclusion**

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Indian and international civil society organizations have paid little attention to India's role in promoting human rights across its borders. New Delhi can be a partner in promoting human rights in the region. The drivers and constraints discussed in this essay indicate how far the Indian government will go in this respect. Organizations that seek to work with New Delhi in human rights promotion must understand and navigate through these if they are to develop effective partnerships.

India's National Human Rights Commission (NHRC) has facilitated establishment and capacity building of national human rights institutions in Afghanistan, Nepal and Maldives in the region. This is in tune with India's recent stance at the UN General Assembly that "the focus should be on advocacy and consensus building through promotion of better understanding of human rights issues" while ensuring "full respect for the sovereign equality, territorial integrity, and political independence" of all countries (Louis 2014). New Delhi is likely to persist with this middle path as the default position on human rights agenda in its foreign policy.

*Meenakshi Ganguly*

### **India can no longer remain a bystander on foreign policy**

*As an emerging economy, there are increasing expectations that India will be more vocal in promoting universal human rights principles at home and abroad. Just as in the past it backed people's movements in Nepal and Bangladesh or provided leadership to oppose apartheid in South Africa, there is gradual recognition that in some situations India will need to do more than quiet diplomacy and persuasion. A country that craves a global role cannot afford to simply abstain on key issues.*

### **Growing role**

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During a recent visit to Nepal, Indian Prime Minister Narendra Modi recommended that the Nepalese Constituent Assembly forge a consensus and meet its January 2015 deadline to write a new Constitution. Considering that the process has been stalled for nearly a decade, and is expected to be a crucial step towards consolidating the 2006 peace agreement after a violent conflict that killed over 13,000 people, it was not a particularly extraordinary observation. And yet, many in Nepal regarded it as untoward interference in domestic matters. After indignant media commentary, Nepal's Foreign Minister, Mahendra Bahadur Pandey, had to clarify that "it was neither any formula or dictation by India".

India elected a new government in May 2014, and since taking office, it has actively focused on promoting business and investment opportunities to revive the drooping economy. The Indian government seeks a global profile, partnering with other nations. Prime Minister Modi has already joined in a dizzying array of multilateral meetings: BRICS, ASEAN, IBSA, SAARC, to name just a few. India's foreign policy establishment also believes that India deserves a permanent seat on the United Nations Security Council. New Delhi has become an important stop for almost every significant world leader, who is usually accompanied by businesses looking for opportunities to tap into India's vast market potential. Almost all of them also claim to support a permanent seat for India on the Security Council.

At the same time, the government has announced renewed efforts to collaborate and assist on development projects in the region, including in Nepal (see the contribution of Ram Mashru on India's foreign aid policy in this volume). But, for those who believe that as an emerging power, India has a growing role in world affairs, the ire in Nepal draws attention to the challenges in promoting basic rights.

## Reluctant proponent of human rights

Traditionally, Europeans and North Americans have taken the lead on global bilateral and multilateral diplomacy for the protection of human rights. That power stemmed not just from traditions of democracy at home, however uneven, but from the economic ability to invest abroad, provide aid, trade and financial services, from military strength, and from cultural and historical affiliations. European states and the US often rue that they are inevitably called upon to resolve human rights challenges – and are then decried as bullies. This is particularly true at a time when the world's self-proclaimed beacon of rights and liberties, the United States, is a tarnished brand. Accusations of hypocrisy add to the discredited but still widely used defence that criticisms on a country's human rights record interfere with a nation's sovereignty.

Countries like South Africa, Brazil, Germany, Japan and India are increasingly expected to find a voice, and solutions to end human suffering. While many Indians crave that India be a globally recognized leader, what it will do with an increased international voice is still unclear. India is now gaining the resources and clout to play a positive leadership role. In December 2014, for example, India introduced a resolution declaring June 21 as 'International Day of Yoga' in the UN General Assembly, which was adopted with an unprecedented 175 nations joining as co-sponsors.<sup>1</sup>

As the largest democracy in the world, it is expected that India will take similar initiatives to lead and support attempts by countries from the global South to persuade and pressure abusive governments. While it is good that India wants to promote yoga's holistic approach to health and well-being, it is quite a shift from when India, with far less clout in the global community, took stronger positions on contentious issues. India was one of the leading voices to oppose apartheid in South Africa. In 1959, while still a very young nation, India provided asylum to the Dalai Lama, and still hosts the Tibetan government-in-exile along with nearly 100,000 Tibetan refugees. In its own neighbourhood, India, in the early 1990s, promoted democracy in Bangladesh and Nepal. New Delhi was a strong critic of the Myanmar military regime when opposition leader Aung San Suu Kyi was first being persecuted.

However, India has in recent times been a reluctant proponent of rights. Instead the focus remains on trade and security, promoting domestic interests. Long a target of violent attacks by Pakistan-based militant groups, India pushes for strong and united global response to such security challenges. But on harder questions of accountability and the rights of the marginalized, New Delhi prefers bilateral dialogue or quiet diplomacy to encourage domestic solutions (see also the essay of Sanjoy Banerjee in this volume).

<sup>1</sup> 'International yoga day result of Indian diplomacy: Sushma Swaraj', NDTV, 16 December 2014. Available at: <http://www.ndtv.com/article/india/international-yoga-day-result-of-indian-diplomacy-sushma-swaraj-635122>.

As a result, the Asian giant has ended up being regarded as a chronic fence-sitter on key issues. It rarely votes for human rights resolutions on specific countries, recently abstaining during a 2014 UN General Assembly resolution on North Korea. Its most recent two-year term on the Security Council (2011-2012) was widely seen in foreign policy circles as a disappointment. India abstained on hard issues of international peace and security – even when civilians were at grave risk – a policy paralysis that has not helped the country's stature.

While India wants to defend the sovereignty of nations, it has often failed to speak for the rights of citizens. Instead of using its growing economic power and leverage as an international donor, India only appears to have a clear vision of what it does not want to do. It abstains from Western-led initiatives it considers aggressive, but offers nothing in the alternative.

## Overcoming challenges

Indian officials express distrust for international action to address human rights violations by the state, noting, with reason, that smaller and vulnerable countries are targeted, while major powers and favorites of the West are shielded from international action. New Delhi regards itself as a champion for governments of developing states that believe that their former colonial masters, having destroyed economies and created communal divisions in the colonies for their own financial gain, are now imposing standards that they themselves violated for centuries.

India also resists actions it views as conflicting with its strategic agenda towards China, which has had growing influence in South Asia. China actively rejects human rights as a component of foreign trade and investment – and the Indian establishment believes that if it develops a principled approach to foreign affairs, China will use this to its own advantage. As a result, unfortunately, New Delhi seems inclined to adopt China's selective policy of promoting non-interference in the 'internal affairs' of other states. Its foreign policy highlights bilateral engagements and 'quiet diplomacy', rather than public concern for human rights.

However, there is now some recognition that India is unlikely to have the cash to compete with China in checkbook diplomacy. As a democracy, it faces risks by openly supporting dictatorships and regimes that remain in power through oppression, and it realizes that remaining insular is not an option.

A hopeful sign is its recent willingness to speak out on Sri Lanka. After several years of quiet diplomacy with no impact, India joined others at the UN Human Rights Council to call for accountability for war crimes committed by both the government and the LTTE. It has supported Human Rights Council resolutions on Sri Lanka in 2012 and 2013. In his 2013 statement in support of the resolution, the Indian envoy noted "the inadequate progress by Sri

Lanka”, and called “for an independent and credible investigation into allegations of human rights violations and loss of civilian lives”. India, however, abstained in 2014 on a resolution establishing an international investigation by the UN Office of the High Commissioner for Human Rights into allegations of war crimes.

The new government led by Prime Minister Narendra Modi has been vocal in promoting democratic principles. However, India still has to overcome some crucial challenges to meet its foreign policy expectations. It has a very small diplomatic cadre and thus is often ill-equipped to tackle country situations. Civil society in India rarely participates in or informs foreign policy discourse. The few think tanks and universities that address these issues have little influence over the foreign policy establishment.

India has had past opportunities to distinguish itself on the international stage. In Syria, an IBSA (India, Brazil and South Africa) team met with the Bashar Al-Assad government in 2011 to call for protection of human rights and find a domestic solution to the protests. Assad admitted to “some mistakes” and promised reform, but then simply ignored those commitments.

India is expanding its economic ties to countries like Vietnam and Myanmar, and is contributing to developing infrastructure projects in Afghanistan. It is also participating in reconstruction efforts in post-conflict Sri Lanka. While addressing international gatherings, Prime Minister Modi has spoken of the importance of democracy, but as yet has not offered any views on ending human suffering in flashpoints like Iraq, Ukraine or the Central African Republic. Disappointingly, India rarely calls for an end to abusive laws and practices in individual countries, missing the opportunity at summits or other meetings to speak up for reform.

But global events have an impact, and there is gradual recognition that India will need to use its clout and respond to expectations that as a democracy, India, unlike China, will promote human rights.

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*Rohan Mukherjee*

## **Indian multilateralism and the global human rights order**

*Indian foreign policy has evolved over the last six decades from a position of enthusiastic support for multilateralism to exceptionalism and selective engagement. To successfully engage the world's largest democracy, the global human rights order must understand and accommodate India's twin quests for autonomy and status.*

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### **The evolution of Indian multilateralism**

A recent volume on Indian multilateralism asks if, in the near future, India will be a rule taker, rule breaker, rule maker, or rule shaper (Sidhu et al. 2013: 5). The basic question here is whether India as a rising power faced with an existing architecture of multilateral institutions in various issue areas – including human rights – will support these institutions or oppose them. And if India opposes existing arrangements, will this opposition entail simply flouting the rules and norms of the global order, or will India set up alternative forums either alone or in conjunction with other regional or rising powers? These are vital questions within the larger framework of Indian multilateralism, particularly for the global human rights order which relies extensively on multilateral efforts for its sustenance and enforcement.

In the years immediately following independence, India was an enthusiastic multilateralist for both normative and strategic reasons. From the 1940s through the 1960s, India embraced emerging global institutions in areas as diverse as human rights, nuclear non-proliferation, and peacekeeping. India's support for multilateralism during this period was partly due to the shared worldview of its leaders at the time, particularly Jawaharlal Nehru, Mahatma Gandhi, and Rabindranath Tagore (Bhagavan 2010). It was also part of the broader strategy of non-alignment, which was designed to protect India's autonomy in the face of the cold war's polarised politics (Chamling 1978: 116). At a time when India was weak, multilateralism was a source of strength and influence. India gradually became a leading representative of the Third World in organizations such as the United Nations General Assembly (UNGA) and Security Council (UNSC). Despite Nehru's passing in 1964, India's support for multilateralism did not change markedly though it did suffer two major crises, the first via India's intervention on behalf of East Pakistan in 1971, and the second via India's first nuclear test in 1974. In both cases, India found itself on the wrong side of world opinion and international law. With time, however, these differences were smoothed over and India continued to engage in international institutions, particularly those designed to promote socio-economic development in the Third World.



The end of the cold war coincided with a period of internal change in India, producing both internal and external impulses for a reorientation of Indian foreign policy (Mohan 2005). Domestic economic reforms unleashed the potential of India's economy and created new groups with an interest in shaping the external agenda. Much like China after 1978, India's foreign policy after 1991 shed its ideological content and became more pragmatic in nature. In the minds of Indian decision-makers, economic growth began replacing multilateral diplomacy as a source of legitimacy and influence in international affairs. At the same time, the global order became significantly more Western-dominated than it had ever been during modern India's existence. For a country that had been closer to the Soviet Union before 1990, this was a difficult change of circumstances. New Delhi's post-cold war strategy involved playing along with multilateral institutions while pursuing bilateral partnerships – predominantly economic in nature – with as many countries as possible. The world was eager to do business with India; hence the failure of multilateral negotiations such as the World Trade Organization's (WTO's) Doha Round became less costly for New Delhi as bilateral sources of trade and investment continued to grow. India's approach to multilateralism thus went from being supportive in the years following independence to being selective following the cold war.

Today, India's multilateralism mostly involves seeking exceptions for itself in various institutions ranging from the UN Security Council to the UN Framework Convention on Climate Change. The largest exception in this regard was accorded by the United States to India in 2008 with the conclusion of an agreement on civilian nuclear cooperation that effectively legitimized India's status as a de facto nuclear weapons state and made it the only non-party to the Nuclear Non-Proliferation Treaty (NPT) to gain access to internationally regulated markets for nuclear materials and technology. Whereas earlier India used to think of and position itself as a champion of Third World countries, today many developing countries in a variety of forums find their interests at odds with India's more particularistic conceptions of national interest. In keeping with its growing power, India is more prone today to thinking unilaterally and bilaterally than it was in the past. Nowhere is this more evident than in South Asia, a region that has traditionally lacked substantive multilateral initiatives and continues to see only superficial types of cooperation between India and its neighbours (Michael 2013).

The current disconnect between Indian foreign policy and multilateral institutions is not just a product of India's growing power and changing attitude towards multilateralism. It is also a function of the distribution of power and status within the global order. The West, led by the US, remains the most powerful coalition of countries within most multilateral institutions. Rising powers such as China, India, Brazil and South Africa are increasingly seeking greater status and benefits within the system. The question remains, however, as to whether these new powers are willing to disproportionately shoulder the costs of providing global public goods such as a clean environment, lower trade tariffs, and international security. The current global order is largely the result of significant investment by the US following the Second

World War (Ikenberry 2011), and any country that wishes to displace or diminish the role of the US within this setup must correspondingly undertake to provide the global public goods that the US has been providing to the Western-dominated multilateral system since 1945.

The present situation creates a particularly intractable chicken-and-egg problem for those who wish to see new powers successfully participating in existing multilateral institutions. A country such as India is unlikely to shoulder disproportionately higher costs to uphold the global order without a concomitant rise in its status within the order; conversely, the gatekeepers of the order – the US and its allies – are unlikely to accord higher status to a country such as India without greater evidence of a willingness to act 'responsibly', i.e. in support of the existing order. In other words, India will not do more unless it is recognized as a truly global and vital multilateral actor, and the great powers will not provide this recognition unless India does more. There is also the possibility that countries like India, Brazil and China, being denied the greater representation they seek in current institutions, might set up entirely new structures of global governance, as the BRICS countries have done recently with a new development bank and currency pool. While such a trend taken to its logical conclusion would complicate global governance considerably, it is presently a minor deviation that may not last long given the inherent differences between the BRICS nations (Pant 2013). Meanwhile, the most obvious form of recognition the great powers could provide India is permanent veto-wielding membership of the UNSC. This is particularly relevant to the area of human rights, in which the UNSC plays an important role when gross violations occur.

### India and the human rights order

The Constitution of India, a document of 448 articles in 25 parts, gives considerable importance to what India's founding leaders called 'Fundamental Rights'. These rights, enshrined in Part III, appear right after the delineation of the Indian political union and Indian citizenship, and ahead of every other aspect of Indian law and government laid down in the Constitution. Despite a strong legal framework, however, the Indian government has struggled to implement a robust human rights regime at home. Government security and police forces are often the worst offenders. For most of the 2000-2012 period, the Political Terror Scale (Gibney et al. 2014) – a yearly measure of physical integrity violations – gave India a score of 4 on a scale of 1 to 5, based on US State Department and Amnesty International reports. This score corresponds to a situation where "civil and political rights violations have expanded to large numbers of the population. Murders, disappearances, and torture are a common part of life. In spite of its generality, on this level terror affects those who interest themselves in politics or ideas" (Ibid).<sup>1</sup>

<sup>1</sup> Much of this terror is confined to regions of insurgent activity in India's border regions, as well as a large swath of territory in eastern and central India that is home to Marxist militant groups known as the Naxalites. Nonetheless, police brutality and state excesses are commonplace across India.

This philosophical and legal commitment to human rights coupled with dismal implementation is replicated at the international level. India is party to various human rights treaties and conventions including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). India is also a signatory to the Convention Against Torture (CAT) but has not moved toward ratification (see also Matthew D. Stephen's contribution to this volume). Interestingly, India has not signed the optional protocols to the ICESCR, ICCPR, CEDAW, and CRC that allow individuals to file complaints with international monitoring committees regarding the implementation of these rights within countries. This reluctance suggests a persistent concern among decision makers in India about the use of international treaties to interfere with the domestic authority of the state. Indeed, in many parts of India the state is still not on a firm footing with regard to effective governance and legitimacy, and the fear that this weakness may be exploited by local groups that form linkages with influential international organizations is a major worry for the Indian government.

At the same time, India is reluctant to actively promote human rights abroad or to censure other countries for their violations of human rights. The rare instances in which India does condemn the practices of other countries are due to other impulses than the desire to secure the global human rights order, such as domestic politics or external pressure. In the case of Sri Lanka at the UN Human Rights Council from 2009 onwards, for example, New Delhi initially voted against Colombo under political pressure from Tamils in India (Kumar 2014). The norm, however, is for India to maintain a studious silence about the human rights practices of others – even in the Sri Lankan case, New Delhi eventually overrode Tamil concerns by abstaining on a vote at the UNHRC calling for an international investigation into alleged war crimes during the Sri Lankan civil war (Ibid). Despite being a liberal democracy with a commitment to human rights, India firmly eschews human rights as a foreign policy goal.

The reasons for this aversion are rooted partly in India's strategic culture<sup>2</sup> and partly in the implications of the changing distribution of power and status in the global order discussed in the previous section. Indian strategic culture at its core contains two components: a desire for strategic autonomy (Narang & Staniland 2012) and a desire for recognition by other states of India's past and future status as a global power (Abraham 2007). During the cold war, when India was relatively weak, its leaders turned to multilateralism as a way of enhancing their country's international standing. This included the realm of human rights, where India led the charge in the UN against the apartheid regime in South Africa and

<sup>2</sup> Strategic culture is defined as “a system of symbols” that acts to establish “pervasive and long lasting strategic preferences” with regard to the role and efficacy of military force in international affairs among a nation's decision makers (Johnston 1995: 46).

Israel's policies with regard to Palestine. As part of non-alignment, multilateralism helped enhance both India's strategic autonomy and international status by providing an alternative route to influence and legitimacy that lay outside the global ideological divide. At a time when the UN was largely gridlocked by US-Soviet competition, India's rhetorical support to human rights carried few costs.

After the end of the cold war, as the UNSC became a hub of intervention in the name of human rights and peace-building across the globe, India retreated from its previous stances precisely because it found greater autonomy in pursuing a unilateral or bilateral path. Status too could now be earned through economic diplomacy with select countries in order to expand trade and investment relationships that would add to India's economic weight in international affairs. The post-cold war period also coincided with a dramatic increase in militancy in the Kashmir valley, sponsored by Pakistan, to which Indian armed forces responded with increasing repression during the 1990s. Coupled with growing insurgencies in India's northeast and the Naxalite belt, the resulting situation meant that support for external intervention for the sake of human rights might someday backfire on India, whose own state-building project is incomplete (Jha 2012).

Thus as the global human rights order moved towards a more contingent view of sovereignty evident in ideas such as the Responsibility to Protect (R2P), India sought to defend its autonomy by adopting an increasingly absolutist stance. As the West increasingly questioned India's ability to act ‘responsibly’ with regard to human rights (among other things), New Delhi questioned the ability of the human rights order to protect India's interests and accommodate its views on foundational questions of civilian protection, the use of force, and sovereignty. Consequently, to the chagrin of Western democracies, India frequently found common ground with Russia and China during humanitarian crises in its most recent term on the UNSC (NYT 2012). In a trajectory mirroring its overall approach to multilateralism since independence, India's foreign policy has gone from enthusiastically supporting multilateral human rights initiatives to being selective and qualified in supporting such initiatives today.

### India and human rights in the UNSC

The UNSC is a major site of contestation in the global discourse and practice of human rights today. Charged with maintaining international peace and security, the body is often called upon to act in times of grave humanitarian crisis. The UNSC is also an institutional microcosm of contemporary great power politics, containing (broadly speaking) two distinct camps on human rights issues. The first, led by the West, emphasizes the contingent nature of sovereignty and the need for intervening in cases of serious and widespread human rights violations. The second, led by Russia and China, emphasizes the absolute nature of sovereignty and the need for respecting a state's freedom to act as it pleases with regard to the

society that it governs. Both positions reflect the respective capabilities and interests of their representative countries, yet there are also strong philosophical differences between the two camps on basic questions of order and justice.

For the reasons stated in the previous section, India frequently finds itself in the second camp, though not without reservations. India has been ambivalent toward legal intervention by the UNSC, for example with regard to international criminal tribunals or courts. In a 2013 General Assembly debate on global accountability for war crimes, that coincided with the submissions of the annual reports of the tribunals on Rwanda and Yugoslavia respectively, India's deputy Foreign Minister questioned the impact of such tribunals on the respective nations they dealt with.<sup>3</sup> In debates over criminal accountability under UN auspices, India privileges the national over the international, emphasizing the importance of domestic judicial and political solutions in all but the most fragile settings. This line of reasoning is also evident in India's opposition to the International Criminal Court (Ramanathan 2005).

In a similar vein, India's position on human rights and intervention, although not explicitly stated in any single policy document, can be summarized as one that views local political processes as the primary mechanisms by which humanitarian crises can be defused. India takes an absolutist stance on sovereignty, yet it is not immune to considerations of civilian protection and external intervention in times of crisis. In this manner, India's view is closer to that of other multi-ethnic middle-income democracies such as Brazil and South Africa that also struggle with the antinomies of liberty and order in relatively fragile political settings.

Indeed, at one point in the Syrian conflict in 2011, the three countries – all on the UNSC that year – sent a joint delegation to meet with the Syrian President in an effort to find a local political solution to the conflict (Lassen 2013). The effort produced no tangible results, yet the coming together of these three countries suggests the emergence of a nascent coalition of non-Western democracies that lie somewhere between the West on the one hand and Russia and China on the other when it comes to questions of human rights and state sovereignty. While the forum known as IBSA (India, Brazil and South Africa) has become a venue for discussing common political values and approaches to human rights issues (among other things), it remains to be seen whether this coalition's activities extend beyond crisis situations (for an analysis of the international relations and foreign policies of IBSA countries, see the essay of Matthew D. Stephen in this volume). India for its part continues to seek autonomy and eschew lasting coalitions or identification with any one party in the global debate over human rights as played out in the UNSC. This strategy has thus far allowed India

<sup>3</sup> United Nations General Assembly 33rd meeting, 'Culture of global accountability now a reality, top officials of Rwanda, Former Yugoslavia Tribunals tell General Assembly', 14 October 2013. Available at: <http://www.un.org/press/en/2013/ga11441.doc.htm>.

to maintain its distance from the growing interventionism of the organization while reaping other benefits that frequent non-permanent membership has to offer.

There can, of course, be no greater guarantee of the autonomy and status that India seeks than permanent veto-wielding membership of the UNSC. India has long made the case for reform in UNSC membership, but for various reasons this goal has remained elusive. Compared to other international institutions, such as the International Monetary Fund (IMF), where a modification of voting rights to accommodate the growing economic clout of new powers such as China and India has been achieved with relative ease, the UNSC remains a closed great power club. India has consequently adopted a frequently obstructionist attitude toward the organization and its activities. From New Delhi's perspective, it makes little sense to invest in bolstering the legitimacy of an organization that does not accord India the status it deserves in world politics. However, as the chicken-and-egg conundrum discussed earlier highlights, the existing great powers in the UNSC are unwilling to admit new members even without veto power. The Western members of the P-5 are wary of new powers derailing the already slow-moving and encumbered proceedings of the organization, while the non-Western members (Russia and China) are unwilling to let new members dilute their authority within the institution, particularly in the context of regional rivalries such as those between Japan and China, and India and China.

### Looking forward

What then will India's approach be toward the rules of the international human rights regime, particularly in the UNSC? India is unlikely to be a rule breaker, i.e. a nation that stands in gross violation of human rights and the global regime. It is also unlikely to be a rule taker, a nation that by and large accepts the various instruments and conventions of the regime. Rather, as in other multilateral forums, India is likely to act as a rule shaper, seeking exceptions for itself whenever possible and generally dragging its feet on cases of proposed humanitarian intervention. New Delhi is comfortable in the space between the West and East in the UNSC, a space that does not require the articulation of a clear position on human rights and state sovereignty. The cover provided by this space also suggests that India will not take on the costs of establishing alternative institutions, at least in the area of civil and political rights, though it might be convinced to contribute to new institutions that focus solely on reconceptualizing human rights as economic rights – the 2014 Fortaleza Declaration of the BRICS countries, for example, emphasized the right to development as deserving of equal consideration, along with other universally recognized human rights.<sup>4</sup>

<sup>4</sup> 'The 6th BRICS Summit: Fortaleza Declaration', 15 July, 2014, Fortaleza. Available at: <http://www.brics.utoronto.ca/docs/140715-leaders.html>.

India's overall selectivity and ambiguity toward the international human rights regime is likely to continue as long as India's state-building project is in progress and as long as India is not granted the status it seeks within international institutions, particularly the UNSC. This means that while India will not be granted veto-wielding permanent membership of the UNSC anytime soon, India cannot also be expected to contribute significantly to the functioning of the organization in the manner desired by the Western members of the P-5. Given this impasse, what can we expect from India in future non-permanent terms on the UNSC? Based on its most recent term, it appears that India will continue to play the role of a conscientious objector to humanitarian intervention and R2P initiatives in the UNSC. It will remain exceedingly (and justifiably) wary of the potential for interventions to expand into regime change efforts. It will continue to stress the importance of local political solutions to humanitarian crises.

On the whole, India's position is unlikely to change until it is given a definite stake in upholding the architecture of the UNSC. Human rights advocates and strategists can count on India's support in the UNSC only if they are able to deliver some movement on the issue of permanent membership. Once India is a part of the inner circle and its autonomy and status are protected by charter, New Delhi is likely to more constructively engage with the arguments made by the West on human rights. As a liberal democracy, India has no quarrel in principle with Western ideals of human rights. However, it does differ on how best to achieve human rights protection without straying into the realm of regime change or other political and security side effects. Having a dialogue on equal terms, however, is as valuable to New Delhi as protecting human rights across the globe. Therefore whatever other differences may exist in outlook and philosophy between India and the global human rights regime, the first step to creating a meaningful exchange on the subject would be to accord India the representation and status it seeks in international institutions dealing with human rights, particularly the UNSC. Until then, India will remain somewhere between East and West on the spectrum of trade-offs between order and justice.

*Matthew D. Stephen*<sup>1</sup>

## **India, emerging powers and global human rights: Yes, but...**

*In contrast to China or Russia, India and other emerging Southern powers such as Brazil and South Africa have embraced the beliefs and institutions of human rights and democracy. But their visions regarding the proper role of global human rights differ from those of the liberal West.*

### **Introduction: A waning West**

In Western capitals, anxieties have been mounting for some time about the emergence of rival centres of power, and what this might mean for the norms and institutions associated with Western values and interests. In the last decade, the OECD's share of global GDP shrank from 60 to 47 per cent (World Bank 2014). By 2030, it is expected that China and India together will account for 39 per cent of the world economy, and the economies of the five BRICS will outweigh those of the G7 countries by around 40 percent (OECD 2012). The United States' National Intelligence Council surveyed these trends and concluded that "with the rapid rise of other countries, the 'unipolar moment' is over and Pax Americana – the era of American ascendancy in international politics that began in 1945 – is fast winding down" (National Intelligence Council 2012).

What implications will the rise of new major powers have for global human rights? This question is relevant because human rights – understood as the universal, inalienable and equal entitlements of all persons by virtue of being human – are historically a product of the modern liberal West (Donnelly 2007).<sup>2</sup> Human rights were gestating in the British Bill of Rights and John Locke's Two Treatises of Government (both of 1689), were consecrated on both sides of the Atlantic by the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789), and were eventually universalized in the Universal Declaration of Human Rights of the United Nations (1948). If the liberal West has been the historical engine of global human rights, what happens when this engine loses momentum?

<sup>1</sup> I thank Gerrit Kurtz, Garima Mohan and the editors of this volume for very helpful comments on an earlier version.

<sup>2</sup> As Donnelly also underlines, this does not mean there is anything inherently 'Western' in the concept of human rights, but it is where they emerged historically.

To address this question, this contribution takes a look at the approaches of three of the emerging Southern powers in relation to global human rights, namely, India, Brazil and South Africa (IBSA). The IBSA states are of particular interest for a number of reasons: their growing economic and political clout; their preponderance in their respective regions; and their centrality to Southern multilateral settings such as the G77 at the United Nations, the Non-Aligned Movement, and the IBSA and BRICS forums of emerging economies. But perhaps most importantly, the IBSA states are emerging powers with democratic political systems. They have therefore been courted as potential 'swing states' between the West and its Chinese and Russian interlocutors (Fontaine and Kliman 2013). But which way will they swing?

### Emerging powers and second-order human rights conflicts

Although it may be true that, historically, human rights are the product of "the successes of liberal power and money" (Hopgood 2013:182), today, they have gone far beyond this and become a fundamental institution of modern political orders. Human rights have come to be propagated by a vast array of international agreements, intergovernmental organizations, and non-governmental organizations (NGOs) that have collectively succeeded in embedding human rights as a core institutional structure of modern world society (Meyer et al. 1997). In addition, the language of human rights has come to be embraced 'from below' by movements for social progress and justice, civic activist groups, and by victims of political repression, all over the world.

Clearly, human rights have graduated from a particularity of the liberal heartland to a core normative feature of global society. But the universalization of human rights does not mean that all countries have converged on the same understanding of them. Second-order disagreements regarding the scope, meaning and political implementation of human rights remain pervasive. Even the Universal Declaration of Human Rights, while claiming to speak for 'all peoples and all nations', encountered resistance from some Islamic states on the issue of freedom of religion, and from the socialist bloc on the issue of freedom to leave one's own country. These sorts of disagreements over the scope, meaning and enforcement of human rights are what characterize the major disputes between states today, and over which emerging Southern powers such as India differ from established powers.

To understand these second-order human rights conflicts, we need to examine how emerging powers such as India relate to human rights differently than established powers. Consequently, the following sections examine the problem of domestic implementation of human rights in the emerging powers, before turning to how this plays out in their multilateral diplomacy.

### Emerging powers' domestic human rights implementation

Today, India, like the other IBSA countries, embraces human rights and democracy as core principles of its domestic order and as fundamental norms of international society. India's Constitution enshrines the country's status as a democracy that should secure its citizens justice, liberty, and equality, and India's political system is characterized by a strong opposition and the genuine capacity to change government. But while it is often assumed that democracy and human rights are natural allies, India has shown a striking capacity to combine democracy with widespread violations of human rights in practice (Beer and Mitchell 2006). Police and armed forces impunity, especially arising from the Armed Forces (Special Powers) Act, mean that India's government is responsible for large numbers of physical human rights violations. With regard to state-sanctioned political violence, all of the BRICS apart from South Africa are considered in the 'worst offenders' category of the Political Terror Scale for the period 2009-2013 (Gibney et al. 2014).

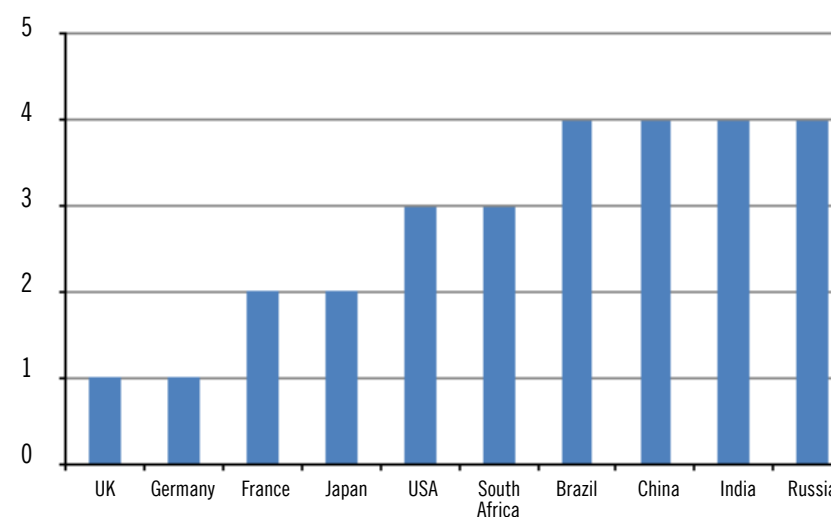


Figure 1: State-sanctioned physical integrity human rights violations, emerging and established powers. Source: Political Terror Scale, data for 2012 (Gibney et al. 2014). Measured on a 0 (best) to 5 (worst) scale, this measures the extent of physical integrity human rights violations by a government in a given year.

More generally, all of the IBSA countries suffer from monumental levels of inequality and societal poverty, which critically undermine the capacity for their citizens to enjoy their social, political and economic human rights. India and South Africa, in particular, have been less able than the other emerging powers to create an environment that fulfils economic and social rights.

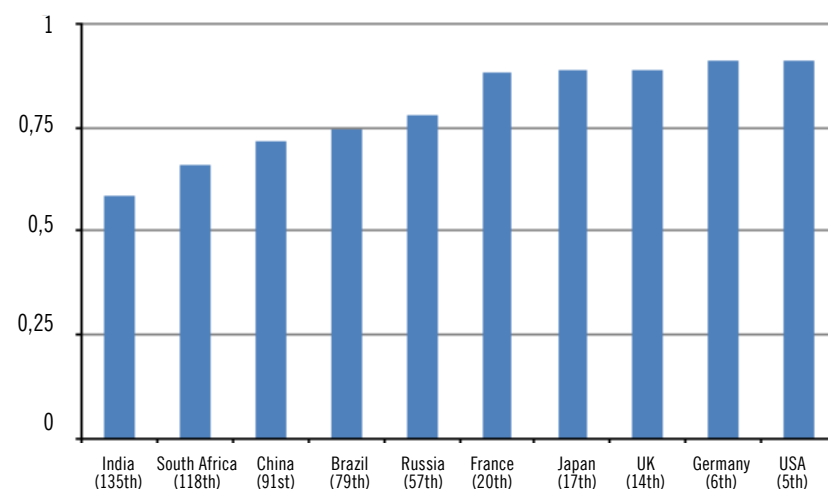


Figure 2: Comprehensive human rights, emerging and established powers. Source: United Nations Development Programme (2014). Measured on a scale between 0 and 1, the Human Development Index measures features associated with economic and social rights, such as health, lifespan, education, and having a decent standard of living.

This indicates that formal and ideational commitment to human rights are often far removed from a state's capacity or willingness (or both) to deliver on those obligations. It is no wonder that emerging powers are more sensitive to external 'interference' in their human rights affairs, and unenthusiastic about being held accountable for upholding international human rights commitments.

### Emerging powers and international human rights norms

As with most developing countries, emerging powers have traditionally emphasized non-interference and sovereignty as deep organizing principles of international society. The sovereign equality of states became a normative principle in accordance with the values of anti-colonialism, which became embedded in India in doctrines such as the Five Principles of Peaceful Coexistence (1954), and by most Southern countries in the Non-Aligned Movement (1961): sovereignty, territorial integrity, peaceful relations, and non-interference. Today, India emphasizes both human rights and non-interference as guiding principles of its diplomacy. In this, it sits uneasily between two different worlds. This can be seen in the contrasting language endorsed by India in the IBSA and BRICS forums.

Since 2003, India, Brazil and South Africa have convened under the framework of the IBSA Dialogue Forum, which is designed primarily to coordinate their attempts to reform international institutions. At these meetings, they frequently point to human rights as a core concern for the international agenda and for their own domestic development. Most recently,

in 2011 the IBSA states declared human rights to be one of the core "principles, norms and values underpinning the IBSA Dialogue Forum", along with participatory democracy and the rule of law (IBSA Leaders 2011: 1). In their trilateral cooperation, the IBSA states have promoted a broad approach to human rights that links them to social equity, poverty eradication and social and economic development. Moreover, they have stressed the importance of racial and gender equality as core components of their public policies (IBSA Ministers 2003: para. 6-7). The IBSA states are therefore exponents of an 'encompassing' approach to human rights.

The language used by the BRICS Forum forms an interesting contrast to that of IBSA. The BRICS' founding vision for a "a more equitable and fair world" did not include a role for human rights (BRICS Leaders 2011). Designed to facilitate the transition towards a "multi-polar world order", the BRICS Forum has only mentioned human rights on a single occasion (in connection to the Syrian civil war), and never as a basic principle in their visions of the future world order they are trying to create. As such, a cleavage does seem to exist between the 'democratic' and more authoritarian emerging powers. While India and the other IBSA states have embraced the concept of human rights at an ideational level, China and Russia have different ideas. Nonetheless, the IBSA states are willing to work together with China and Russia on a pragmatic basis where they share common interests. In this approach, the IBSA states are no different from the established powers, who have often cultivated pragmatic relationships with repressive governments in pursuit of their goals.

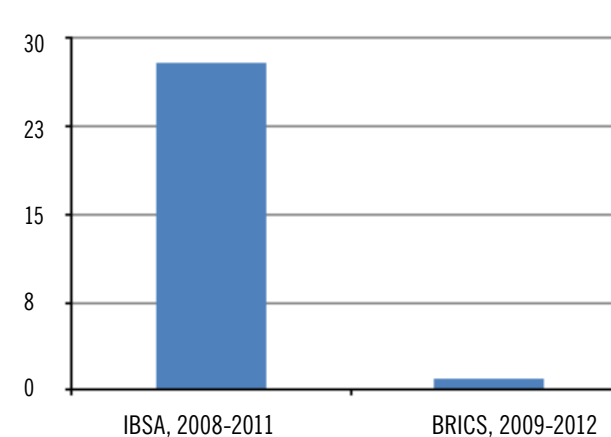


Figure 3: Human rights in multilateral declarations: IBSA and the BRICS. Source: Author. The table compares the frequency of the term 'human rights' in the five most recent annual declarations of the BRICS (2009-2012) and IBSA (2008-2011) groups. Note: Prior to 2011, South Africa was absent from the BRICS.

While the IBSA states, in contrast to China and Russia, have reaffirmed the universality of human rights in their multilateral diplomacy, they are also internally divided over how encom-

passing human rights obligations should be. This can be seen by their ratification rates for human rights conventions (see also Rohan Mukherjee's contribution to this volume). Overall, India has a mixed record regarding the ratification and implementation of major international human rights conventions and treaties. While its ratification rates are not exceptionally low (it has ratified more major conventions than the United States), India remains one of the few countries in the world not to have ratified the Convention Against Torture (although it has signed), and the only member of the IBSA group not to have ratified (or signed) the Rome Statute of the International Criminal Court. India appears deeply reluctant to expose itself to international recrimination for its human rights failings – something it shares with the United States.

	Brazil	China	India	Russia	South Africa	France	Germany	Japan	UK	USA
Convention Against Torture	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
International Covenant on Civil and Political Rights	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Convention for the Protection of All Persons from Enforced Disappearance	Yes					Yes	Yes	Yes		
Convention on the Elimination of All Forms of Discrimination against Women	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
International Convention on the Elimination of All Forms of Racial Discrimination	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
International Covenant on Economic, Social and Cultural Rights	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	
International Convention on the Protection of the Rights of All Migrant Workers										
Convention on the Rights of the Child	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Convention on the Rights of Persons with Disabilities	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Rome Statute of the International Criminal Court	Yes				Yes	Yes	Yes	Yes	Yes	
Total Ratifications	9	6	7	7	7	9	9	9	8	3

Figure 4: International human rights treaties ratification. Source: United Nations Office of the High Commissioner for Human Rights (2014).

The IBSA states also differ on the appropriate response of states and international organizations to other states' human rights failings. Especially since the 1970s, the United States and other Western countries, often claiming to represent the 'international community', have taken it upon themselves to act in the interest of human rights globally. Beginning in 1977, the American Department of State has issued annual human rights reports on foreign countries: a 'naming and shaming' ritual that has become part of what is referred to as the 'democracy promotion and human rights' agenda.

India is very sceptical of naming and shaming particular countries' human rights records, and has traditionally abstained on, or opposed, country-specific resolutions in forums like the UN General Assembly and the Human Rights Council. China and India have never voted to denounce single countries' human rights records in the General Assembly, and rarely do so in the Human Rights Council (Ferdinand 2014: 385). Both continue to oppose a moratorium on the death penalty (Ferdinand 2014: 385).<sup>3</sup> While the IBSA states have increasingly coordinated their multilateral diplomacy, they failed to cast a single united vote on the human rights situations in countries such as the Democratic Republic of Congo, Iran, Turkmenistan, Uzbekistan, Myanmar, Belarus, and North Korea (Graham 2011) – this is largely because of Indian reluctance to criticize others. India has insisted on upholding its 'non-aligned' position and continued to develop relations with states that are often seen as international outcasts. Simply put, India is not in the naming and shaming business, emphasizing non-interference not only out of pragmatism, but as a moral principle (Jaganathana & Kurtz 2014: 462). In contrast to Brazil and South Africa, India also joined with China and Russia in abstaining on the Arms Trade Treaty in 2013. In this, as in many other international arenas, India behaves atypically for a democracy.

### Sovereignty and interventionism

A final issue on which major emerging powers differ is the relationship of human rights to state sovereignty. There is a contradiction between the universal nature of human rights, and the political organization of the world into sovereign states. What if a repressive national government engages in widespread human rights violations? Most controversially of all, human rights have been used – under certain extreme circumstances – as a legitimate ground for armed (coercive and violent) intervention. Today, this is most commonly discussed under the rubric of the Responsibility to Protect (R2P). Nowhere have the tensions between the universal applicability of human rights and national responsibility for them

<sup>3</sup> The main exception in India's case were resolutions in 2009, 2012 and 2013 on 'Promoting reconciliation, accountability and human rights in Sri Lanka'. But in 2014, when the resolution included calls for investigations into Sri Lanka's human rights records by the UN High Commissioner for Human Rights, India abstained, citing national sovereignty concerns (Bagchi 2014).

played out more clearly than in the realm of coercive interventionism, and the R2P remains deeply contested (Rotmann, Kurtz, Brockmeier 2014).

While Western powers have tended to embrace the concept of R2P, Russia and China are seen as particularly sceptical due to their defence of strict state sovereignty (Gowan & Brantner 2008). India and the other IBSA states have tended to fit somewhere in between: endorsing human rights obligations, participating in peacekeeping operations, but criticizing the selectivity by which Western countries choose to enforce human rights. In recent debates at the United Nations, all of the IBSA states have come across as increasingly sceptical of interpretations of R2P that compromise state sovereignty, seeing it as a back-door device for Western imperialism. India has warned that “R2P cannot turn out to be a tool legitimizing big power intervention on the pretext of protecting populations from violations of human rights and humanitarian law” (Puri 2012). Similarly, South Africa has lamented the “misuse of the concept [of R2P] in order to justify unilateral military action and flagrant abuse of military might in lieu of the sovereignty and territorial integrity of States”.<sup>4</sup> Meanwhile, Brazil has sought to attach further conditions to the use of force via its ‘Responsibility while Protecting’ doctrine.<sup>5</sup> The IBSA states therefore share basic outlines in their approaches to R2P: a strong focus on multilateralism, strict sequencing of the R2P’s components to make force a last resort, and a sceptical view on the usefulness of military force (Rotmann, Kurtz, Brockmeier 2014).

Despite sharing a broad approach, India, in particular, wants to interpret R2P in a way that is consistent with state sovereignty (Jaganathana & Kurtz 2014; Mohan 2014: pp. 1-9). For India, states have responsibilities to uphold basic human rights obligations and the peremptory norms of jus cogens, but this does not imply that their sovereignty is qualified. Indeed, the onus of the international community lies less in armed intervention and more in the provision of development assistance to fragile states in order to prevent humanitarian crises in the first place.

## Conclusion

Originally emerging in the liberal West, human rights have become universalized and indigenized throughout global society. Far from challenging or criticizing the concept of human rights, the IBSA emerging powers have embraced human rights on a legal and ideational level. In this, they agree with the positions of traditionally dominant Western powers. But India, and increasingly also Brazil and South Africa, are reluctant to criticize other countries

4 United Nations General Assembly (UNGA) (2009) Statement by South Africa. Document A/63/PV.98, p. 17. Available at: <http://unbisnet.un.org/>.

5 United Nations General Assembly (UNGA) (2009) Sixty-third session, 97th plenary meeting. Document A/63/PV.97, 23 July, p. 13.

for their human rights failings, and are also deeply sceptical of Western interventionism and its selectivity. Countries such as India are highly sensitive to Western hypocrisy and double standards, and there is evidence that as the power and influence of India and other emerging powers have grown, these countries have become freer to distance themselves from the human rights positions of established Western powers (Ferdinand 2014: 385-386).

While some feature of emerging powers’ foreign policies may appear troubling for the future of global human rights, the emergence of India and other developing countries may also have salutary effects. While emerging powers’ domestic human rights records are poor, they are improving. India and the other IBSA states identify themselves as democratic and human rights-upholding countries, which also exposes them to moral sanctions when they fail to uphold their own values. The force of example of the IBSA states also shows that a culture of democracy and human rights is not the exclusive preserve of Western countries. Their membership of the BRICS may be pragmatic, but their legitimacy stems in large part from their democratic and rights-based political structures.

In 2012, a major statement by members of India’s foreign policy establishment on India’s broader foreign policy outlook warned that international norms are often simply a mask for pressure “to do the Western powers’ bidding”, and concluded that on such issues “It is often more effective and accurate to say ‘Yes, but...’ than an outright ‘No.’” (Khilnani et al. 2012: 36). Due to their growing clout, rising powers will be able to afford to say ‘no’ more often than in the past. This implies that in the future, established powers will have to rely less on cajoling and arm-twisting, and more on genuine persuasion and compromise. Such an environment may actually favour transnational human rights NGOs. Their capacity for dispassionate monitoring of human rights failures, and to make reasoned arguments without bias, may acquire a renewed importance.



*Gulshan Sachdeva*

## **India and the European Union: Human rights challenges**

*Rising India's global vision of a democratic and multipolar world coincides with that of Europe. Being a democracy, India is sensitive to allegations of human rights violations. Resolutions and concerns by the EU institutions are not fundamentally different than issues being debated and addressed in India. The best engagement strategy for both would be to upgrade and expand existing human rights dialogue.*

### **Introduction**

India is making a successful transition from an excessively inward-oriented economy to a more globally integrated economy. As a result of new policies, it has become one of the fastest growing economies of the world. Despite some serious challenges, like global slowdown, energy security, poverty, infrastructure, regional disparities and internal security, there are strong indications that rapid growth will continue. The main drivers of growth are going to be favourable demography, a relatively large middle class, a strong information technology sector, and focused investment on infrastructure.

Apart from expansion, the Indian economy is also being diversified significantly. Traditionally, the economy was dependent on markets in Europe and the US. In the last two decades, there has been rapid integration of the Indian economy within Asia, which has been reinforced by India's Look East policy that was initiated in the early 1990s. This is clearly evident from rapidly increasing India-China as well as India-ASEAN trade. The 12th five year plan (2012-2017) targets faster, more inclusive and sustainable growth. The focus is on creating human, physical and institutional capabilities. Although rapid growth in the last ten to fifteen years has raised expectations, global circumstances are less favourable today.

As a result of these changes, India is adapting itself simultaneously to the economic globalization and to the emerging balance of power. The strategic consequences of its economic performance are clearly evident. Growth and outward orientation have helped India to re-orient its traditional partnerships with the developing world and forge new relationships with all major powers. India has signed strategic partnership agreements with about 25 countries. Similarly, India has already signed sixteen free trade agreements bilaterally or multilaterally. In addition, about fifteen free trade agreements are at various stages of

negotiations, including with the European Union (EU).

The new Indian Prime Minister (PM) Narendra Modi received a massive mandate in 2014 parliamentary elections mainly on the promise of good governance and development (see also the essay of Vijay Nagaraj in this volume). Hence, his agenda will be to accelerate economic growth through better performance. The Bhartiya Janata Party's (BJP) election manifesto criticized ten years of "jobless growth" by the previous government and promised to focus on manufacturing, agriculture, infrastructure and housing. It talked about one hundred smart cities, high speed railway network and industrial corridors. It seems that the reforms initiated by the previous government will not only continue but will also be accelerated, particularly in areas like labour reforms, energy sector deregulation and privatization.

The immediate focus of PM Modi has been on new initiatives like the 'Make in India' and 'Clean India' campaign. He has also dismantled the 65 years old Planning Commission and created a new institution called NITI (National Institution for Transforming India) Aayog. Restructuring of some social security programmes like the National Rural Employment Guarantee Act (NREGA) is also on the agenda. In addition, the government has rolled out an ambitious scheme of opening bank accounts for all unbanked families and announced targets for renewable energy. Broadly, his major task has been to improve investor sentiment and bring the economy back on track with 7 to 8 per cent growth in three years. He also believes that due to the three Ds (democracy, demography, demand), India is bound to improve its global standing. Although it is too early to judge the performance of the new government, still it seems that Modi has been able to bring an end to the 'policy paralysis' that afflicted the previous government in the last few years.

At the same time, Modi has also raised expectations. The new policies may accelerate economic growth and improve living conditions of the poor. However, they may pose many new human rights challenges due to liberal environmental and land acquisition rules. The Land Acquisition Act 2013, passed by the earlier Congress government with then opposition BJP supporting it, requires 70 per cent locals for acquiring land for public private projects and 80 per cent for private projects. Many states and industry organizations have raised serious concerns that under new provisions it has become almost impossible to acquire land for industry or infrastructure projects. Although dilution in its provisions may be needed for industrialization, it was feared that it may compromise basic rights of land owners. The new ordinance issued by the government, however, has tried to balance farmers' rights and industry concerns. Although the government has made it easier to acquire land in five key sectors including security and defence, infrastructure, power and affordable housing, it left the level of compensation to landowners unchanged, which was four times the market price in rural India and two times in urban areas. The mandatory 'consent' clause and social

impact assessment, however, will not be applicable if the land is acquired for projects in five key sectors.<sup>1</sup>

### **India-Europe/the European Union**

India had extensive economic relations with Europe in the pre-colonial as well as in the colonial period. Despite diversification, its economic relations with Europe remained strong even in the post-independence period. Realizing the importance, India was amongst the first few countries to establish diplomatic relations with the European Economic Community (EEC) in 1962 and signed many agreements in the seventies and eighties. In 1974, a comprehensive agreement was signed between India and the EEC which covered a wide range of economic issues, including trade, economic cooperation, industry, services, energy, telecommunication, tourism, private sector, investment, science and technology, intellectual property, agriculture, development cooperation, environment and human resource development. This was the first agreement signed by the EEC with any non-associated developing country embodying the concepts of commercial and economic cooperation linked with trade. Later, a customs cooperation agreement was also signed.

After the end of the cold war, rising India's global vision of a democratic, multicultural and multipolar world somehow coincided with Europe's. Similarly, when the new economic and security architecture was evolving in Asia, European policy makers also thought that their engagement with Asia would be incomplete without partnering with India. Realizing the importance, they started engaging politically in the 1990s, established the institution of annual summit meetings (supplemented by business summits) in 2000, which resulted in the India-EU Strategic Partnership in 2004 and the Joint Action Plan in 2005. In 2006, India was also invited to become member of the Asia-Europe Meeting (ASEM), an informal process of dialogue between Asia and Europe.

With more than \$130 billion trade in goods and services, the EU is India's biggest trading partner. In the last decade, foreign direct investment (FDI) in India from the countries of the EU has been higher than investments from the US and Japan put together. Besides, Europe is becoming an important destination for cross-border investments and overseas acquisitions for Indian companies. A recent study by the Europe India Chamber of Commerce shows that Indian companies have invested \$56 billion in Europe since 2003. Of this, \$38 billion was spent on Mergers and Acquisitions (M&A) while \$18 billion was for greenfield projects. During this period, Indian investors financed 511 greenfield projects and acquired interests in 411 companies. A close look at the number of technical and financial collaborations signed by Indian companies shows that they have clearly favoured Europe over other regions. As a result of the crisis in some Eurozone countries, Indian investment to Europe has somehow

<sup>1</sup> For details see DNA, 30 December 2014. Available at: <http://goo.gl/OYNl0q>.

declined in the last few years. This crisis, in fact, has not just challenged the European integration project, it also has serious implications for its other global ambitions. Earlier through successful enlargement, introduction of a single currency, the new Lisbon Treaty and External Action Service, the EU was hoping to propagate its concept of 'soft power'. It means countries could rely more on political and economic tools than on military power. Now with its economic crisis as well as complications arising out of the Ukrainian crisis, many of its ambitious projects of playing an important role in global affairs will go into the background as it will be busy internally. This will certainly have negative implications for its global projects of democracy and human rights in a broader world.

Encouraged by positive economic trends, both India and the EU started negotiations for a Broad-based Trade and Investment Agreement (BTIA) in 2007 which are still not concluded. The recurring postponement of the conclusion of trade talks has become a regular feature of India-EU summits. At the twelfth summit, in February 2012, both sides could only declare that negotiations on the trade deal are "close to completion". Since then, there has not even been a India-EU summit, which was held more or less regularly every year since 2000.

### Human rights dimension of India-EU relations

The Joint Action Plan issued in 2005 asserted that both India and the EU "share a common commitment to democracy, pluralism, human rights and the rule of law, to an independent judiciary and media" and "have much to contribute towards fostering a rule-based international order" (p.2). Despite these official pronouncements and positive developments in the economic sphere, it seems many Indian policy makers are still sceptical of Europe's role as a major strategic player in Asia. The EU is hardly a factor in India's foreign policy debates. A significant focus is also on ties with individual European powers. India has separately signed strategic partnerships with the UK, France and Germany. Many in India believe that the EU provides relatively little added value to India's major security challenges related to South, Central, Southeast and West Asian regions and China (Tharoor 2012). Moreover, "New Delhi is fairly unimpressed with Europe's role in global politics" (Mohan 2006) and beyond economic issues, its relevance is limited. As a result, "Europe appears to be playing a diminishing role in India's strategic thinking" (Jaishankar 2012).

Within Europe a few scholars have also noticed that the India-EU dialogues lack "anything substantial on questions of a diplomatic or geo-strategic character"<sup>2</sup> and argued that the "EU needs to pay more attention to its still under-developed political relationship with India" (Grant 2006). One of the main reasons for this has been that foreign policy cooperation

<sup>2</sup> A senior French scholar Christophe Jaffrelot, quoted in *The Hindu*, September 29, 2008. Available at: <http://goo.gl/i23vji>.

among European nations is nowhere near their economic cooperation. Another reason for EU's unimpressive record on strategic affairs has been that it has no common policy on issues about which Indians care the most. This includes India's bid for a permanent seat in the UN Security Council (UNSC). Out of six members who initially objected to the Indo-US nuclear deal on lifting the global ban on nuclear trade with India at the multinational Nuclear Suppliers Group, five were European (Austria, Norway, Switzerland, Ireland and the Netherlands). It is generally perceived in academic and media circles in India that despite closer perceptions on broader global governance issues, somehow many member states of the EU have different interests on specific issues concerning climate change, global trade issues and human rights. As a result, EU's influence on Indian strategic thinking as a whole is rather negligible.

Human rights, democracy and rule of law are core values of the EU. These principles must be reflected in all its internal and external policies. It tries to integrate promotion of these principles through its trade and investment policies, development policy as well as through the Common Foreign and Security Policy. Many issues concerning democracy and human rights of its partners are seriously discussed in various EU institutions, including the parliament. Many member states do raise these issues regularly in their bilateral relations with third countries. In recent years the EU institutions, through resolutions in the European Parliament or its annual reviews, have raised serious concerns about human rights issues in India. Main areas of concern include caste discrimination, violence against women, resumption of executions, children's rights, rights of indigenous people, poor prison conditions, freedom of expression et cetera. Although these issues are becoming important in India itself, they have been considered by many as an irritant in bilateral relations. Shashi Tharoor, former Minister of State for External Affairs in the Congress government, argued that being democracies both "India and the EU are on the same side and have the same aspirations" on the substance of human rights. He also asserted, however, that "there is not a single human rights problem about India that has been exposed by Amnesty International or Human Rights Watch or any European institution, which has not been revealed first by Indian citizens, journalists and NGOs and handled within the democratic Indian political space" (Tharoor 2012).<sup>3</sup> Somehow the post-modern supra-nationalism of the EU has not been fully appreciated by an Indian foreign policy elite still very much concerned by national sovereignty and emerging balances of power in Asia and in the world.

Although India has been one of the strongest advocates of sovereignty, there are some iso-

<sup>3</sup> For details of cases concerning custodial deaths, police excesses (torture, illegal detention, unlawful arrest, false accusations), fake encounters, atrocities on Dalits and minorities, bonded labour, cases related to women and children, excesses by armed forces or paramilitary forces etc. taken up by the National Human Rights Commission, see: [www.nhrc.nic.in](http://www.nhrc.nic.in) (section human rights cases).

lated voices advocating that it is time the world's largest democracy starts promoting democracy and human rights (Ganguly and Sridharan 2013). In the past, India has been criticized both internally and externally for its human rights violations concerning caste atrocities, handling of insurgencies in the northeast and Kashmir, as well as high-profile cases of the 1984 anti-Sikh and 2002 Gujarat riots. Recently, the country has faced a lot of criticism on violence against women. Despite these weaknesses, it is felt that India now has established well-respected institutions like the National Human Rights Commission as well as state level human rights commissions. It has largely independent media and a quite powerful judiciary. So it is believed that uneven performance on human rights in the past should not discourage newly emerging India to take an active role in promoting human rights at home, and perhaps promoting it along with democracy in the neighbourhood and beyond.

In 2012 and 2013 India voted in favour of resolutions “promoting reconciliation, accountability and human rights in Sri Lanka” at the UN Human Rights Council. In 2014, however, it abstained because of the “intrusive” approach, which India argued undermines national sovereignty. Indian establishment is becoming sensitive to human rights violations at home. It is evident from the recent incident where the Indian army has sentenced two officers and three soldiers to life imprisonment for the killing of three unemployed Kashmiri youths in 2010 and later branding them as foreign militants (Pandit 2014). In the last few years, there has been serious domestic debate on repealing the Armed Forces Special Powers Act (AFSPA) which grants special powers to armed forces in “disturbed areas”. So at this stage of development of foreign economic and foreign policy, India is very conscious of its growing role and responsibilities, as well as its linkages to the world. Instead of open criticism of Indian violations, constructive dialogues on strengthening Indian institutions may not only lead to better results within India, but may also lead to India-EU cooperation in third countries as well as at the multilateral institutions.

When India was a very poor developing country in the 1950's and 1960's, it took on the cause of many developing countries against colonization. Later, as a leading member of the Non-Aligned Movement, many initiatives were taken to promote South-South cooperation. It also took major decisions concerning human rights issues when it suited its geopolitical goals. India gave political asylum to the Dalai Lama in 1959. Since then it has been consistent in its support to Tibetan refugees and has accepted new migrants ever since. Their current population in India is close to 95,000. India also intervened and helped in the creation of Bangladesh in 1971. The operation was justified on the grounds of human rights protection and stopping genocide. Indian authorities also intervened in the Jafna food drop in 1987 in Sri Lanka.<sup>4</sup>

<sup>4</sup> See ‘Operation Poomalai’. Available at Wikipedia: [http://en.wikipedia.org/wiki/Operation\\_Poomalai](http://en.wikipedia.org/wiki/Operation_Poomalai).

Broadly, Western actions to address human rights issues in smaller developing countries have been seen within the context of the historical and global geopolitical framework. Within academic and policy circles it is broadly believed that former colonial powers which were responsible for the economic destruction and social divisions are now trying to impose human rights and other standards on developing countries which they had violated not long ago in these very societies. Although the historical Indian position on human rights abroad has not changed significantly, somehow Western criticism has become relatively weak. It is also being felt that newly emerging India could help promoting human rights issues in developing countries indirectly through expanding economic opportunities and strengthening state institutions through cooperation. This approach may provide some new opportunities to work with the EU on issues related to human rights and democracy abroad.

Moreover, in the last decade India has been very active in expanding its development cooperation programmes with other developing countries. These programmes abroad have expanded considerably, both in geographical spread and in sectorial coverage.<sup>5</sup> The programmes include Lines of Credit (LOC), capacity building, particularly through the Indian Technical and Economic Cooperation (ITEC) programme, and bilateral grant assistance projects. By March 2014, the Indian government had signed 176 LOCs covering 62 countries with credit commitments of about US\$ 10.2 billion. Every year about 10,000 personnel from more than 150 countries are trained in 47 empanelled institutions in India through more than 280 short term, medium term and long-term training programmes. In addition, India has been building grant assistance projects in the neighbourhood and Africa.<sup>6</sup> Its commitment to Afghanistan is close to \$2 billion. Unlike traditional donors, however, none of these activities are conditional (see the essay of Ram Mashru in this volume). Although India is unlikely to follow the definitions and guidelines of the OECD's Development and Assistance Committee, its expanding activities may provide opportunities for the EU and its members states to work together in third countries in the areas of capacity building and training, particularly in the areas of education, health, women empowerment and strengthening of democratic institutions.

The EU established an annual local human rights dialogue with India in 2004. In the Joint Action Plan (JAP) in 2005 both India and the EU outlined that they share values of democracy and human rights. Both agreed to (a) the dialogue on human Rights both in a multilateral and bilateral context; (b) consult and discuss positions on human rights and democracy issues and look at opportunities for co-sponsoring resolutions on thematic issues in relevant fora;

<sup>5</sup> Annual Report 2012-13, Policy Planning and Research Division, Ministry of External Affairs (New Delhi: Dolphiin Printo-Graphics): 121-127.

<sup>6</sup> For details see Sachdeva, G. (2014), ‘Emerging dynamics of Indian Development Cooperation’, 8th Berlin Conference on Asian Security (BCAS) “With great power comes great responsibility”, 100 years after World War I – Pathways to a secure Asia. Berlin, June 22-24, 2014. Available at: <http://goo.gl/U2GswT>.

and (c) look together for possible synergies and initiatives to promote human rights and democracy.<sup>7</sup> The dialogue has been taking place at the local level annually since 2004. The EU is trying to work through exchanges with human rights institutions and interactions with civil society. It also funds human rights projects under the European Instrument for Democracy and Human Rights (EIDHR) budget lines. Since 2009, EIDHR allocations were about Euro 5 million. In 2012, the dialogue was postponed due to “agenda coordination” issues. The eighth meeting of the India-EU ad-hoc dialogue on human rights took place in November 2013. For 2014 to 2020, a major focus is given to caste discrimination and violence against women.

The Indian human rights situation is likely to improve mainly due to domestic debates, actions by local NGOs and academia. Condemnations and resolutions by the European Parliament or other institutions of the EU may not be very helpful. In fact, they may adversely affect bilateral ties without making any serious contribution to the human rights situation in India. Similarly, trying to incorporate human rights issues in the proposed bilateral trade and investment agreement will only delay (or perhaps derail) final conclusion of negotiations.

## Conclusion

Overall, at this point in history, India with its ambition to play a larger role in global institutions including the UNSC, is sensitive to allegations of human rights abuses at home and may be willing to help strengthening democratic and human rights institutions abroad. The Indian approach, however, would differ significantly from that of the EU. Policy makers have asserted very clearly that India does not believe in exporting norms and ideologies. It would like to promote these norms through its own example of vibrant democracy and improvements in its own human rights standards. Moreover, India is likely to work with state institutions in developing countries even though these institutions are not perfect. In given circumstances, the best engagement strategy for both India and the EU would be to upgrade and expand the existing human rights dialogue. This may help better implementation of existing laws within India. Similarly India and the EU can also work jointly in strengthening democratic institutions in third countries where both are already engaged in separate projects.

<sup>7</sup> See India-EU Strategic Partnership Joint Action Plan, 7 September 2005. Available at: <http://goo.gl/E6jZq5>.

Vijay Nagaraj

## Foreign policy, human rights and civil society in a Modi-fied India

*A critical assessment of continuity and change in India's foreign policy under Prime Minister Modi demands an engagement with the ideological basis of his regime. This essay argues that Hindu-majoritarian cultural nationalism (or Hindutva) and neoliberal developmentalism are central to shaping the Modi regime's foreign policy, including its approach to international human rights. The resulting challenges to civil society and human rights work in India are many-sided and demand a strengthening of politically grounded human rights work.*

### Understanding the Modi regime: cultural nationalism, development and the decisionist persona

Development, and by extension governance, in Modi-speak, performs two crucial ideological functions, mainstreaming Hindutva and entrenching neoliberalism. As Nitin Gadkari, until recently head of the ruling Bharatiya Janata Party (BJP) [claimed](#), “Hindutva is related with nationalism and nationalism is development of the country”. Modi’s own developmentalist positioning goes back to the brutal [pogrom](#) against [Muslims](#) in Gujarat under his Chief Ministership in 2002. While his defiance in the face of trenchant criticism and refusal to even tender an apology really pitchforked Modi onto the national stage as a champion of Hindu-majoritarian cultural nationalism or Hindutva, he needed and grasped the development and governance agenda in search of broader political legitimacy (see Mishra 2012 for instance). Modi first made development and the so-called ‘Gujarat [model](#)’ central to his electoral agenda in the post-pogrom elections in Gujarat, which he cynically tried to hold even before survivors had left the refugee camps. In reality, Modi’s discourse on development is not merely a continuation of Hindutva but a new phase in its consolidation.

What Prime Minister Modi is doing in the name of development is also important to signal and the early signs are clear: India’s national rural employment guarantee [scheme](#) – one of the world’s most ambitious livelihood security programmes – is being steadily [dismantled](#) and massive cuts in social [spending](#) are on the anvil. Foreign and domestic capital is being aggressively wooed with a red carpet of sweeping incentives and [labour](#) and [environmental](#) protection reduced to ‘red-tape’ to be cut. Development Modi-fied implies a stress on aggressive neoliberalism in the economic sphere buttressed by a majoritarian cultural nationalism that seeks to radically reconstitute the social sphere.

Modi's Thatcher-esque [mantra](#) of “minimum government, maximum governance” also resonates with a middle-class fed on populist anxieties regarding socially accommodative democracy and stories of ‘policy paralysis’ of the corruption-tainted previous government. Modi's ‘doer’ mentality and the promise of a strong and definitive leader, i.e., decisionism, thus resonate with the rural and urban middle class alike. As Pandian and Roy (drawing on Carl Schmitt) [outline](#), “in its pure ideological moment” what matters in decisionism “is the very act of deciding in itself, irrespective of the content and consequences of such decisions. Thus, decisions do not draw their validity from their content but their form [...]”. And Modi has shown that he is the master of form, from his carefully designed outfits and curated media appearances to his aphorisms.

“[Trade with Tradition, Commerce with Culture](#)” captures the essence of his approach to foreign policy, spelt out further in the foreign policy section of the [BJP's 2014 election manifesto](#):

“India was reckoned not only as Vishwaguru [teacher of the world] but also a vibrant trading society. Our ancestors used to trade with foreign nations through the routes of sea, centuries ago. This was based on the strength of our business acumen and integrity, our products and crafts. The symbols of our ancient civilizations stand as a testimony to our architectural and urban planning excellence. We will revive Brand India with the help of our strengths of 5 T's: Tradition, Talent, Tourism, Trade and Technology.”

### The neoliberal turn and Indian foreign policy

Before proceeding further, it is important to note that the political economy of Modi's foreign policy bears all the imprints of the neoliberal economic programme initiated in India in 1991 by the Congress-led government. Driven by a decisive political economic shift towards liberalization, privatization, and deregulation, India's foreign policy goals increasingly came to be articulated in terms of securing and granting market access and opening up spaces for global capital.

Implicit in the neoliberal turn were also the first decisive steps towards tearing away from the state the last vestiges of the Ambedkarite<sup>1</sup> commitment to social justice and rights as well as the Nehruvian<sup>2</sup> vision of a liberal, secular, universal nationalism. The neoliberal turn, however, needs also to be located in the context of post-Soviet Union uni-polarity, the decay of the idea

1 Dr. B.R. Ambedkar (1891-1956), born into an ‘untouchable’ caste, went on to become the prime architect of the Indian Constitution and pioneer the cause of radical social justice in India through political action and Constitutional guarantees.

2 Jawaharlal Nehru, first Prime Minister of India, who championed a liberal, secular and developmental state, non-alignment, decolonization and peaceful co-existence in foreign policy.

of non-alignment, and the politics of south-south political solidarity yielding to the economics of south-south competition for global capital in search of cheap labour and quick returns.

The basis for India's quest for major power-status was effectively rearticulated in terms of being a free-market democracy, one that was also increasingly framed in terms of economic competition with China. In effect, this privileged India's economic and market potential, signaling also a shift away from the Nehruvian approach that privileged non-alignment, decolonization, state-led development, and south-south solidarity. It is no surprise then that India not only moved closer to the US but also to Israel (discussed further below). As the political economic weight shifted foreign policy in favour of market pragmatism and away from principled forms of political engagement, India's support for long-cherished struggles such as in Palestine and Burma/Myanmar also became far more muted or increasingly cosmetic.

Even India's idea of ‘extended neighbourhood’, [crafted](#) in terms of ‘widening concentric circles’, found its most concrete expression in market and economic terms. Moves towards the South Asian Free Trade Area (SAFTA) have taken precedence over trying to get the South Asian Association for Regional Cooperation (SAARC) to be a coherent multilateral force. Similarly the focus of India's investment in cementing closer ties with ASEAN (Association of Southeast Asian Nations) centred largely on the signing of a Free Trade Agreement (FTA) in 2009.<sup>3</sup>

It is important to note here that globally too the basis of south-south alignments have been profoundly influenced by the forces of neoliberal globalization seeking maximal facilitation of the movement of capital, commodities, and technologies. Alignments involving Brazil, China, India, and South Africa – IBSA, BASIC or as BRICS with Russia – are essentially imagined in terms of leveraging their collective economic or market potential.

The ideological bandwidths of these southern multilateral alignments are essentially narrow, with shared interests being defined almost entirely in terms of free market economic imperatives. It is no surprise that these alignments have largely failed to birth a substantive alternative global vision and agenda around key issues such as the reform of global governance, the UN human rights system, development financing, or the financial, food, fuel and climate crises.

### Ideology in India's foreign policy under Modi

A leading policy commentator recently [claimed](#) that the “trademark of Modi's foreign policy is that it is shorn of ideology, with pragmatism being the hallmark”. Nothing could in fact be fu-

3 Under this FTA there will be mutual removal of import tariffs on more than 80 per cent of traded products between 2013 and 2016.

rther from the truth. While pragmatism is certainly not lacking – most evident in the way Modi has sought to balance his ties with Japan and his engagement with China – the ideological influences are clearly visible to those who want to see them. Two examples should suffice.

India's drawing significantly closer to Israel during BJP-led governments has a very strong ideological basis. Following a meeting between Prime Ministers Modi and Netanyahu on the sidelines of the UN General Assembly in September 2014, India's Home Minister Rajnath Singh, effectively Modi's number two, visited Israel. In doing so he followed in the footsteps of BJP patriarch L.K. Advani whose first foreign visit on assuming office as Home Minister in a BJP-led government in 2000 was to Israel. Indeed, it was during the tenure of that government that the first ever visit to India by an Israeli Prime Minister (Ariel Sharon in 2003) materialized, not long after India openly declared its nuclear capabilities.

Shared industrial, scientific, commercial, and technological interests as well as extensive defence cooperation apart, the fact that Hindutva and Zionism are seen as ideological [cognates](#) is very significant. M.S. Golwalkar, a key ideological patron of Hindu nationalism, and several others leaders in that tradition are [admirers](#) of Zionism and Israel. While Israel becoming one of India's biggest arms suppliers meant that the relationship had warmed considerably even during the previous Congress-led United Progressive Alliance (UPA) government, the Modi regime is ideologically driven towards Israel. While Israel becoming one of India's biggest arms suppliers meant that the relationship had warmed considerably even during the previous Congress-led United Progressive Alliance (UPA) government, the Modi regime is ideologically driven towards Israel.<sup>4</sup> This will mean a further narrowing of India's support for Palestine.<sup>5</sup> It is no surprise that the Modi government blocked moves by the opposition members, mainly from the Left and the Congress, to discuss the recent Gaza war in Parliament. It also ignored public [protests](#) and [petitions](#) by Indian civil society to take a stronger line against Israel's excesses in Gaza.

A second axis that reveals the ideological underpinnings of Modi's foreign policy pertains to the resetting of India's 'Look East' policy (inaugurated in 1992 and subsequently reinvigorated<sup>6</sup>) by the Modi regime. As 'Act East' it will involve engaging China but also working

4 While Hindutva and Zionism are often seen as naturally allied (see Urvashi Sarkar, 'Natural allies of Hindutva', May 2014, Himal South Asian, available at <http://m.himalmag.com/natural-allies-hindutva/>) it is equally true that early Hindutva ideologues also admired Hitler (see Ram Punyani, 'M.S. Golwalkar: Contextualizing Hindutva Fascism', 10 March 2006, Countercurrents.org available at <http://www.countercurrents.org/comm-puniyani100306.htm>).

5 Even though India voted against Israel at the UN Human Rights Council over the recent Gaza war, this seems more like an empty gesture and is unlikely to continue.

6 The policy was reaffirmed in 2010 and received a further boost with the holding of the Heads of State/Government ASEAN-India Commemorative Summit in New Delhi in 2012

towards closer ties with strategically important Myanmar and ASEAN and deepening engagements with Singapore, Japan, and South Korea. At a pragmatic level this engagement will revolve around leveraging India's infrastructure marketplace for East Asian technological prowess in connectivity, ranging from communications to transport, central to the Modi regime with its emphasis on 'smart cities' and bullet trains.

Here again the deeper ideological aspects are significant. Discursively speaking 'Act East' invokes the very combination of ideas that Hindutva and Modi cherish: a robust free-market and conservative nationalism thriving under conditions of authoritarianism or a paternalist-guided democracy, *à la* China or Singapore. In fact, even Modi and Japanese Premier Abe's closeness has been [attributed](#) to their "shared conservative-nationalistic, pro-business views".

Put differently, 'Act East' echoes the Modi regime's stress on (re)building a tight-knit imagined national community that is socially and ideologically disciplined, technologically advanced, and economically prosperous. Apart from echoing a glorious past this also seeks to transcend the 'Western afflictions' arising from commitments to ideas such as liberal human rights that are seen as breeding individualism, difference, dissonance, permissiveness, and dissidence rather than community, oneness, solidarity, respect for tradition or authority, discipline, and obedience. In other words, in relation to human rights, Modi's Hindutva stands exactly where Lee Kuan Yew<sup>7</sup> or Mahathir Mohammad's<sup>8</sup> articulations of '[Asian values](#)' stood.

### Foreign policy, human rights and Indian civil society

Over the last decade, an ideologically differentiated and fragmented Congress Party-led UPA coalition government, which initially included India's parliamentary Left, allowed secular and progressive civil society to influence some aspects of social policy.<sup>9</sup> Nevertheless, during the same period – largely due to widespread protests against a raft of anti-people policies, mal-governance, and corruption – the pressure on social movements and NGOs, especially human rights organizations, also increased, especially in the form of restrictions on foreign funding, monitoring of activities, etc.

The BJP-led regime, precisely because it is ideologically better cemented, offers far fewer such footholds or openings. In a Modi-fied India, the erosion of democratic and secular space by emboldened Hindu nationalist elements and religious fundamentalisms of all hues poses one of the biggest challenges for the protection of human rights and civil society.

7 Former strongman of Singapore who served as Prime Minister for 30 years.

8 Former Prime Minister of Malaysia, in power for 22 years.

9 The most prominent examples include the enactment of the right to information and employment guarantee legislations, legal and policy measures pertaining to unorganized labour, amendments to the land acquisition act that could mitigate some of the worst effects of the development induced-displacement, etc.

In the international human rights arena, issues seen as impinging on Hindutva ideas of the social, especially those pertaining to caste, sexuality and gender, are likely to be the most contentious. A clue as to how the Modi regime is likely to engage with human rights at the UN may be gleaned from the approach of previous BJP governments.

For instance, throughout the run-up to and at the UN World Conference Against Racism 2001, BJP-headed Indian governments (from 1998 onwards) vehemently opposed any discussion on caste-based discrimination at the UN. Significant pressure was brought to bear on Dalit groups and other domestic human rights organizations supporting them to prevent them from raising the issue of caste discrimination at the UN. And the evidence thus far suggests this is set to continue. At the recently concluded Beijing +20 Asia-Pacific regional review conference in Bangkok, India ensured that there was no reference to caste in the outcome document; it also did not support any language referring to sexuality.<sup>10</sup>

As is evident from the Modi regime's overt support to the Sri Lankan government to ignore the UN Human Rights Council (UNHRC) mandated enquiry into allegations of grave human rights violations in the final stages of the civil war, it is not going to support any further strengthening of international human rights mechanisms. It is instructive to note what Dr. Subramanian Swamy, Chair of the BJP's Committee on Strategic Action and a Member of its National Executive Committee, [said](#) when quizzed on this issue on a recent visit to Sri Lanka:

“You don't give them visas, that is all. Why should Sri Lanka care? Who are they? The UNHRC cannot make these unilateral decisions. If it wants teeth it would have to go to the Security Council and the Chinese will exercise their veto. So it is just a scarecrow. I don't think Sri Lanka should bother. We certainly will not allow an intrusive foreign investigation into human rights by international agencies.”

Needless to say this approach has as much to do with the defensiveness over the allegations around the grave human rights crimes in Gujarat under Modi's Chief Ministership, as with the regime's approach to international human rights.

At the same time, it is important to note that the embrace of human rights is far from universal across the spectrum of Indian civil society. It is a very complex, diverse and vibrant community that accesses and deploys multiple vocabularies of justice, political ideologies, and ethical frameworks. On the one hand, there is a significant level of organized [engagement](#) with the UN human rights system and standards, for instance on questions of women's rights, caste discrimination, torture, the death penalty, enforced disappearances, and security legislation.

<sup>10</sup> Personal communication from civil society delegates at the forum.

On the other hand, many relatively successful national level initiatives to shift law and policy – for example with respect to freedom of information, rural employment guarantee, social security for unorganized sector workers, food security, and land and forest rights – did not really rely extensively on mobilizing and deploying international human rights vocabulary, standards or mechanisms.<sup>11</sup> They all used a rights discourse, but one that was primarily drawn from a domestic political discourse, indigenous vocabularies of social justice, as well as Constitutional jurisprudence. While many of these initiatives did draw from struggles elsewhere in the world, international human rights frameworks or standards have not been sources of political legitimacy these significant civil society initiatives and social movements. If at all invoked, and they certainly were, the use of international human rights language or standards in mobilizing public or political opinion has remained confined to certain contexts or within courts.

Similarly, even public [protests](#) and [petitions](#) by Indian [civil society](#) with regard to Israel's recent war on Gaza, for example, centred on a political and ideological critique of the occupation of Palestinian territories rather than relying on international human rights per se. In the context of foreign policy, a prominent case in which international human rights have been a front-and-centre concern for Indian civil society is Sri Lanka. Driven by large-scale political mobilization in the state of Tamil Nadu over the plight of the war-affected Tamil minority in Sri Lanka, India's positions on the issue within the UN Human Rights Council have been in sharp focus and a subject matter of high politics. Emanating largely from Tamil Nadu, human rights advocacy has been almost exclusively [directed](#) at getting India to press the Sri Lankan government into taking meaningful action on issues concerning accountability for crimes committed in connection with the civil war.

But this approach, championed by many domestic and international human rights organizations including Amnesty International India, has all but ignored pressing India on measures within its own remit that affects the human rights of war-affected communities in Sri Lanka. This includes preventing Indian trawlers from undermining the livelihoods and marine habitats of the Northern fishing community in Sri Lanka, addressing problems with India-supported post-war recovery measures such as the housing project, or ensuring justice for the displaced by the India-funded power plant in Sampur in north-eastern Sri Lanka. While expressions of solidarity in India have been loud, they have often, as has been suggested [elsewhere](#), failed “to draw on a better understanding of the ground realities and the varied agendas, expectations and anxieties” of the communities they seek to support within Sri Lanka.

<sup>11</sup> These campaigns were built on a combination of mass mobilization using strong local idioms, effective use of judicial spaces, leveraging available legislative influence and political windows, credible research, and, effective media engagement.



None of this is to downplay the value of human rights and civil liberties work in India, whether professional-donor-funded or volunteer-member-based. The joining up of both with social movement organizations, buttressed by networks of progressive institutions and individuals, presents the best hope for advancing human rights in India. This stitching together, though difficult, is not impossible and matters more than ever in an India under Modi.

Finally, some international actors, including the Secretary General of Amnesty<sup>12</sup>, have sought to leverage the Modi regime's propensity to pursue major power status as a reason for it to take human rights seriously. But this is dangerous because this pursuit of major power status is underpinned by a combination of neo-liberal political economic and majoritarian cultural nationalist (Hindutva) logics, and to spin human rights into this already toxic mix may well prove self-defeating ultimately.

12 Times of India (2014) 'Modi government should advocate human rights - at home and globally: Salil Shetty', 18 August. Available at: <http://blogs.timesofindia.indiatimes.com/the-interviews-blog/modi-government-should-advocate-human-rights-at-home-and-globally-salil-shetty/>.

*Ram Mashru*

## **Developmental diplomacy: India's international aid policy**

*India has grown increasingly influential as a provider of development assistance, but remains reluctant to promote human rights. Why? Strategically, development advances India's national interests – by winning it diplomatic and commercial favour – whereas rights impede them. Normatively, national sovereignty and non-interference are the foundations of India's foreign policy, and they are norms that permit the provision of aid but prohibit the promotion of rights.*

### **Introduction**

Aid is rarely popular; and in times of economic hardship support for it shrinks even further. In 2010, when the UK was still mired in recession, the Institute of Development Studies [conducted a poll](#) on public attitudes towards aid, and the results were unsurprising. Though the majority thought that the UK had a moral "obligation" to tackle global poverty, 64 per cent said tackling poverty at home should be the priority while 63 per cent thought the UK's foreign aid budget should be cut.

Despite regular assurances, from both officials and development professionals, that overseas aid is crucial to advancing Britain's interests abroad, the UK's anti-aid crusade has repeatedly, and often aggressively, been advanced. Beyond the developed world aid is no less divisive and India, which plays an increasingly influential role in the international aid regime, is an intriguing and important case.

India's development needs are well established. It is home to [a third of the world's poor](#), a [third of the world's children stunted](#) as a result of malnutrition, and records the world's [worst levels of maternal mortality](#). Partly because of this India has historically been the [world's largest recipient of international aid](#): between 1951 and 1992 it received a total of \$55 billion. And yet, since the 2000s, India has evolved from being a net recipient of aid to a net donor of aid. As the country [backslides across a number of development indicators](#), it has begun to offer more overseas assistance than ever before.

Between 2009 and 2013, a period of sharp economic slowdown across the globe, India's aid outlay grew by 32 per cent each year. Last year, its foreign-aid budget grew to \$1.3

billion – an all-time high.<sup>1</sup> India is now the world's largest provider of aid to Bhutan and the Maldives, and the world's fifth largest to Afghanistan. In the league table of international donors, the size of India's overseas assistance, in real terms, now puts it ahead of Canada and [on par with](#) Norway and Turkey.

But the size of India's aid budget does not capture its true value: the \$1.3 billion fund for grants and loans does not take into account the differences in purchasing power. The cost of training civil servants, for instance, is higher in the US than it is in India and, as a result, India's aid 'goes further'. The increase in value from lower operating costs applies across the board for India's technical-assistance programmes. When variations in cost are taken into account, the value of India's aid [jumps from \\$1.3 billion to \\$5.3 billion](#). If Lines of Credit, an alternative aid instrument, are included as part of India's aid budget, the real-term value of India's aid package totals \$2.5 billion. When this is adjusted for variations in purchasing power, the value quadruples to \$10.2 billion.

India's growing development deficits at home, on the one hand, and its increasing aid generosity, on the other, has led some observers to dub it a "needy donor". This seeming paradox has confounded many. Supporters of India's mounting overseas aid programme celebrate India's rise as an 'emerging donor', while critics accuse India of squandering money abroad that could be used at home. Both views, however, miss the mark.

Aid is not a form of apolitical charity. Rather, aid is underpinned by national strategic interests. The political and strategic character of aid is recognized across global aid industry: countries have long used aid as a vehicle for their broader political, commercial and security objectives. This is no less true of India.

While strategic, India's overseas assistance is also underpinned by powerful normative commitments. India vehemently rejects the hierarchical donor-recipient relationship that characterizes the aid granted by the global North to the global South. Instead, India's overseas assistance is founded on the principles of solidarity, equality and mutual benefit. Reference to India as an 'emerging donor' is also grossly historically inaccurate, and overlooks its long and successful record as a donor to other developing countries.

In short, India's overseas aid programme is a form of developmental diplomacy, designed to encourage growth in fellow developing countries while furthering India's broader strategic

<sup>1</sup> India's development assistance comprises of grants, technical assistance and lines of credit (LOCs). The \$1.3 billion total captures the first two and excludes LOCs.

objectives. This, however, marks a stark contrast to India's human rights foreign policy, which remains reluctant and reactive.

## Paradigm shift

The international aid regime is split between 'donors' and 'development partners'. The term 'donors' refers to the [29 states](#) that belong to the Development Assistance Committee (DAC), the traditional coordination mechanism for aid transfers established in 1960 under the auspices of the Organization for Economic Cooperation and Development (OECD). 'Development partners', by contrast, is the title adopted by the growing number of developing and middle-income countries that account for an increasing portion of international aid transfers.

The DAC consortium and 'development partners' espouse aid philosophies that are diametrically opposed. The DAC defines development assistance as "concessional transactions" provided by governments for the promotion of economic development and welfare in recipient countries.<sup>2</sup> These transfers invariably carry conditions that the countries receiving them must abide by, thus establishing a vertical hierarchy between the aid donor and the aid recipient. Development partners, however, condemn this hierarchy on principle and instead advocate a horizontal relationship in which transfers are made that are mutually beneficial and free of conditions.

Unlike DAC member states, which have tended to offer aid at high-level ministerial meetings, India grants overseas aid only when countries request it by making applications through their local Indian embassies. It is this request-led approach that, in practice, establishes India's aid as horizontal, not hierarchical. Not only does demand-driven aid ensure that it is the countries requesting aid that decide when, why and how much aid they receive but, also, it ensures that India's overseas assistance remains non-imperialist. As one [Indian official put it](#), "We [do] not link development to political demands [as] we have experienced the futility of doing this, ourselves."

## South-South solidarity

As data published by the UN Conference on Trade and Development shows, economic cooperation between members of the global South has ballooned. South-South trade doubled in the last twenty years, and now accounts for 25 per cent of the global total.<sup>3</sup>

<sup>2</sup> OECD, 'Official development assistance – definition and coverage'. Available at: <http://www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm#Definition>

<sup>3</sup> UNCTAD (2013), 'South-South trade continues to increase, UNCTAD statistics show', 16 December. Available at: <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=673>

This growing developmental interdependence is partly reactionary, driven by bearing the brunt of conditions imposed by 'Western' aid. It is also partly historical, stemming from a shared history of colonialism, interventionism and Western hegemonism.<sup>4</sup> For this reason, when granting aid, India's assistance focuses solely on the economic causes of underdevelopment. To offer aid targeted at anything else – such as the quality of a recipient country's government or laws – would fall foul of the anti-colonialism and non-interventionism that underpins the strengthening solidarity between members of the global South. Indeed technical assistance, India's flagship development assistance programme, is designed deliberately to enhance the capacity and stock of skills of recipient states without demanding the things that have made 'Western' aid so contentious, namely political, economic and legislative reform.

Central to the normative divide between traditional donors and 'rising' developing world donors is the rejection of dominant aid discourses. Development partners oppose the terms 'aid', 'donor' and 'subject' – replete in the language of DAC donors – in favour of a more egalitarian lexicon that includes the words 'partnership', 'cooperation' and 'assistance'.

This egalitarianism is certainly not new. Jawaharlal Nehru, India's first Prime Minister, maintained that India, as a newly independent country, had a duty to share its development experience with others newly freed from the shackles of colonialism. True to this pledge in the 1950s, when India itself was a fledgling state, it invested in nation-building projects in Bhutan and Nepal. And since then it has gradually expanded its sphere of assistance to include other neighbours, its wider region and increasingly sub-Saharan Africa.

Non-hierarchical aid, of the sort that India offers, has proved immensely popular. Countries frustrated by the handcuffs that come with conditional aid from Western states have started to look elsewhere. As a result, DAC member states now face increasing competition from developing partners; a shift reflected in the changing balance of international aid flows. Development assistance from non-DAC states not only grew by 143 per cent between 2005 and 2008, but grew at a time when aid flowing from the developed [stagnated or declined](#).

A [growing body of literature](#) has used 'gift theory' to explain this paradigm shift, and it is a lens that clarifies important aspects of India's overseas aid programme. Gift theory makes clear that South-South co-operation rests on:

- (i) A shared developing-country identity;
- (ii) Experience and expertise in development;

<sup>4</sup> There is a large and complex literature on the merits and demerits of aid conditionality. For an analysis of the link between aid conditionality, aid dependence and debt in Africa, see: <http://www.kanbur.dyson.cornell.edu/papers/africaid.pdf>. More generally, it is acknowledged that conditionality interacts with the "country characteristics" of recipient states, and therefore presents as many challenges as it does rewards: <http://web.stanford.edu/class/polisci440d/Montinola.pdf>.

- (iii) A rejection of imperialist donor-recipient relations; and
- (iv) An emphasis on mutual opportunity.

Equally instructive is the concept of 'global civics', an emerging school of thought that insists countries owe responsibilities to one another as part of a 'global social contract' founded on collective progress (Altinay 2011).

### Strategic assistance

In 2012 India established the Development Partnership Administration (DPA), a government agency modelled on USAID, to coordinate its foreign assistance efforts. At its inception the DPA was endowed with a five-year fund totalling \$15 billion; a sum as large as the political, security and economic aspirations India has invested into its foreign assistance programme.

- (i) Politically, India's non-imperialist approach has endeared it to key allies and potential partners. India's foreign-assistance now flows to more than sixty countries in Asia, Africa and Latin America. In Afghanistan and sub-Saharan Africa, in particular, aid forms part of India's plans to displace China in their intensifying resource race. Aid is also an invaluable soft power asset. The Pan-Africa E-Network, a technological network funded by the Indian government, offers tele-education and tele-medical treatment to 47 African countries, increasing both the appeal of Indian services and the demand for them.
- (ii) The security function of India's aid is clear from the geographic pattern of India's foreign assistance. Bhutan and Nepal, both of which function as buffers between India and China, account for the lion's share of aid grants. Last year India poured \$213 million into Bhutan (36 per cent of its total foreign-assistance grants) and \$49 million into Nepal (8 per cent of the total). By comparison, last year sub-Saharan Africa – a resource-rich region where India has relatively few security concerns – received just \$43 million (7 per cent of the total). India's aid to the Maldives, which has averaged £25 million each year for the past few years, is linked to India's broader maritime objectives, while India's aid to Bangladesh is motivated by India's efforts to stabilise its own troubled northeast.
- (iii) Finally, speaking in February 2014 Shyam Saran, India's former foreign minister, unabashedly acknowledged the "commercial dimension" of India's foreign-assistance programme; a euphemistic reference to India's use of aid grants to expand its trade and investment opportunities abroad.<sup>5</sup>

<sup>5</sup> 'India's foreign aid: Prospects and Challenges', public speech by Ambassador Shyam Saran at Harvard University, Cambridge, February 16, 2014. Available at: [http://ris.org.in/images/RIS\\_images/pdf/India%27s%20Foreign%20Aid.pdf](http://ris.org.in/images/RIS_images/pdf/India%27s%20Foreign%20Aid.pdf).

These interlinked strategic threads – the political, security and economic objectives that drive India's aid policy – are most apparent in Afghanistan, where India has made a multi-year pledge to contribute \$2 billion towards the post-war nation-building effort.

India's aid is aimed primarily at shoring up Afghanistan's precarious security. As international troops begin their departure, there are growing fears that jihadist 'war tourists' will migrate to other theatres of conflict in the region including the Line of Control, the troubled border between India and Pakistan that bisects the insurgency-afflicted state of Jammu & Kashmir. Indian personnel and outposts in Afghanistan are also vulnerable. In May 2014, India's consulate in Herat, a province in western Afghanistan, was attacked, as has happened before with attacks against India's embassies across the country in 2008, 2009 and 2013.

Economically, India's aid to Afghanistan has bought it a political corridor through which it can access oil and gas in Iran and central Asia. And infrastructure projects financed by Indian aid have contributed as much to Afghanistan's development as they have to the protection of Indian private-sector interests, such as the steel consortium investing in Bamiyan in central Afghanistan.

Politically, as well as enhancing state capacity (through the training of Afghan civil servants and police forces), funds from India have gone towards prestige projects, such as the construction of the new marble parliament building in Kabul – a project that won India favour with the now-former Karzai administration.

### Modes of assistance

The many criticisms of India's foreign aid programme fall into two categories: the technical and the ethical. Technical criticisms relate to India's aid capabilities, and are considered here. Ethical criticisms concern India's seeming moral dilemma – the choice between addressing domestic needs, on the one hand, and offering aid abroad, on the other – and are considered in the penultimate section.

India's expanding aid budget (for grants, loans and contributions towards international institutions) is a direct expression of its great-power aspirations. In 2005, India championed the establishment of the UN Democracy Fund and put forward \$10 million towards the start-up costs. India is also among the largest donors to the World Food Programme and the IMF and, after Bangladesh, is the [second-largest contributor](#) to UN peacekeeping forces.

But most pertinent of all of India's aid offerings are its technical-assistance programmes and its cheap credit offerings.

India's celebrated [technical co-operation schemes directly](#) reflect its commitment to addressing the economic, rather than political or social, causes of underdevelopment, and they include ITEC (Indian Technical and Economic Cooperation), SCAAP (the Special Commonwealth Assistance for Africa Programme) and the 'Colombo Plan'.

Technical co-operation – since 1964 the primary mode of India's overseas assistance – allows India to adroitly enhance both the state capacity and skills of recipient countries without interfering in their internal political affairs. India does so by:

- (i) Training civil servants and bureaucrats;
- (ii) Offering consultancy for development projects;
- (iii) Sending Indian experts overseas;
- (iv) Hosting 'study tours' in India; and
- (v) Donating hardware.

In 2012 alone, just under nine thousand people, from more than 161 countries, participated in training courses funded by the Indian government, spanning subjects as varied as economic diversification and election processes.

Lines of Credit (LOCs), by contrast, are a relatively new and controversial credit instrument. Unlike India's other aid offerings, which have in common their lack of conditions, LOCs are loans designed deliberately and specifically to boost India's exports and trade. One example is the \$1 billion infrastructure credit line that India made available to Bangladesh, with the specification that 85 per cent of the goods and services used for construction work under the loan must come from India.

In contrast to grants, conventional loans and technical assistance – aid instruments that are paid for by the Indian government itself – LOCs are financed through the international capital markets and are administered through India's Import Export Bank, a subsidiary of the Ministry of Finance. It is only the interest rates of the LOCs that are subsidized by India as part of its development expenditure, allowing the government to supply billions worth to other developing countries, who welcome LOCs as cheap alternatives to conventional borrowing. Since being introduced in 2003/4, the value of Indian LOCs has more than quadrupled. In May 2014 the total value of operational LOCs reached \$10 billion, 60 per cent of which were offered to countries in Africa.

But the advent of LOCs, and the corresponding explosion in India's overseas aid, has exacerbated old problems. The international aid regime as a whole is notorious for its lack of transparency. The most recent [Aid Transparency Index](#), published in October 2014, was damning: it found that more than half of the world's major donors had underperformed on transparency targets and these problems – of poor management, oversight and accountability – are no less acute in India.

Despite the creation of the DPA in 2012, India's aid policy remains highly fragmented. Whereas the OECD regularly [examines and reviews](#) its development programmes, through multilayered and wide-ranging annual peer reviews, the chronic capacity shortages of India's bureaucracy have meant that individual civil servants, often operating in isolation, are responsible for managing large portions of India's aid budget. Just [one Indian official](#), stationed in Kabul, oversees the country's £2 billion aid bundle to Afghanistan, and the funds are funnelled, without any controls, directly to the Afghan government. The coordination is further complicated by the fact that India's Prime Minister's Office has its own discretionary aid budget. In this muddle the DPA, which is responsible for supervising India's aid flows, simply does not have the capacity to monitor the country's aid activities, leaving India's policy reactive rather than proactive – minimizing its efficacy, impact and value.

### Reconciling domestic development in international aid

India's technical aid capabilities raise serious concerns and, by comparison, the ethical criticisms outlined below are relatively weak.

Implicit in the description of India as a 'needy donor' is the argument that it can ill afford to help others overseas when its own development challenges are so grave. Ethically, these critics argue, India should focus on development at home before development abroad.

This is an argument made again and again, most recently in relation to India's Mars mission, which the progressive economist [Jean Dreze dismissed](#) as a "delusional quest for super power status". But India's space mission offers a number of benefits to ordinary people – including better communication, mapping and weather observation – all of which save lives. The same is the case for India's aid, which delivers a host of short- and long-term, direct and indirect benefits.

First, India's foreign assistance budget is tiny in comparison to the amount the government spends each year on domestic development. A large proportion of India's welfare expenditure takes the form of subsidies aimed at reducing the cost of living. The 2013 Food Security Bill, for instance, has made staple foodstuffs such as rice, wheat and millet available at below-market prices to more than 700 million people. Last year, while India's foreign aid budget grew to \$1.3 billion, its [domestic expenditure](#) on social security, family welfare, healthcare, sanitation, fertiliser and food subsidies totalled \$69.9 billion.

Second, India's international aid policy and its internal development efforts have long been divorced. Rather than seek more assistance from international donors for help towards its domestic development, India has often turned aid down and has even refused it in times of crisis. In 2003 India announced that it would only accept aid from the EU, UK, US, Japan,

Russia and Germany. Further, it declined foreign assistance in 2004, when a tsunami struck south and south-east Asia, and again in 2005 when the insurgency-afflicted state of Jammu & Kashmir was hit by an earthquake. In 2011 Pranab Mukherjee, then India's Finance Minister, infamously dismissed the UK's aid to India as "peanuts"; and in 2012 the administration in Delhi barely shrugged when the UK announced that it would [phase out its bilateral aid to India by 2015](#).

Finally, international aid boosts India's domestic development directly, through the exchange of development experience and knowledge; and indirectly, through the opening up of economic opportunities abroad.

### Conclusion: development but not rights?

India is not a 'needy donor' but a strategic assister, for whom overseas aid is a form of developmental diplomacy that offers a double victory: economically, it has deepened India's ties with crucial allies and potential partners, while politically, it has enhanced India's international profile and its bilateral relations.

Aid is crucial to India's broader political, economic and strategic interests, which, in turn, service India's domestic development. India's overseas aid has a 'multiplier effect': the combination of strengthened foreign relations, enhanced soft power and expanded trade and investment opportunities mean that the rewards of India's overseas assistance far exceed its actual cost in rupees.

Normatively, India's transition, from a net recipient of aid to a net provider of aid reflects a deliberate shift in identity from a developing country to an emerging economy. This shift is underpinned by India's effort to claim greater status in the global policy arena, a stake based on the interrelated values of developing world solidarity, mutual development, equality, sovereignty and non-interference.

But the very norms that drive India's aid act as deterrents to human rights promotion. Unlike development, which aims to alleviate poverty and encourage growth, human rights are intrinsically political and therefore incompatible with the principles of non-interference and sovereignty that underpin India's foreign policy.

In fact, India has an interest in excluding rights from its foreign relations. By not holding other states to account for their rights records, India has been free to form ties with serious rights violators – such as China and junta-controlled Myanmar (as it then was) – as well as avoid having its own rights abuses scrutinized. This mutual wilful blindness, and the strategic and commercial relationships that come with it, would be lost if India adopted the

sort of muscular rights promotion that the EU encourages. As an official in India's Ministry of External Affairs [put it](#), rights, and international commitments that come with them, are "rope [with which] to hang ourselves".

In short, where development cooperation expands India's strategic decision making freedom, rights promotion limits it. In cost-benefit terms, therefore, rights promotion is as costly to India's diplomatic interests as overseas-aid is beneficial.

*Anja Kovacs and Saikat Datta*

## **Digital India abroad: India's foreign policy and digital rights**

*If India has supported economic, social and cultural rights far more vocally at global fora than civil and political rights, this is a result of both domestic security compulsions and historical foreign policy positions. Internet rights advocates' strategies will need to take into account India's preoccupation with sovereignty and an improved international stature to gain the country's full support.<sup>1</sup>*

### **Introduction**

Since the late 2000s, the subject of human rights in the context of the Internet has gained increasing prominence on the international agenda. First introduced in the UN Human Rights Council in 2008, consideration within the UN system began in earnest with the Internet-focused 2011 report of the then UN Special Rapporteur on Freedom of Opinion and Expression, Mr. Frank La Rue. This opened the way for a number of resolutions related to the Internet and human rights in the UN Human Rights Council. In more recent years, and especially since the Edward Snowden revelations on illegal espionage activities by US intelligence agency NSA, the UN General Assembly, too, has acknowledged the importance of human rights online and has touched on or addressed challenges in this regard in a growing number of resolutions. With the highest body of the UN system paying close attention as well, human rights on the Internet have formally become a part of the UN agenda (see Brown 2013 and 2014).

As the largest democracy and one of the largest Internet user bases in the world – facts that India takes, justifiable, pride in – it would be easy to expect India to play an active and even defining role in these debates. But has it indeed fulfilled this expectation? And what can be done to make India a stronger ally in the global debate on the Internet and human rights?

In this short paper, we will first outline India's contributions to the global Internet rights debate. We will then examine the drivers of its foreign policy on these matters. Finally, we

<sup>1</sup> The research on which this paper is based was made possible with the support from Global Partners Digital.

will assess what strategies can be helpful for Internet rights advocates if they want to have India as a stronger ally on their side.

### India and the Internet rights debate at the global level

As a scan of the various Internet rights-related resolutions that have been passed at the UN Human Rights Council (HRC) and the UN General Assembly (GA) in the past few years makes clear, India's voice in the debate on human rights and the Internet has been somewhat muted.

Importantly, India was one of the co-sponsors of the groundbreaking UN HRC Resolution 20/8, on the 'Promotion, Protection and Enjoyment of Human Rights on the Internet', in 2012 – the first ever resolution in the UN system to be specifically devoted to the subject of human rights and the Internet. But it did not join the more than seventy co-sponsors to support the amended version of the resolution, Resolution 26/13, two years later. In fact, when China, supported by others, sought to bring in an amendment to the resolution that would weaken it by leaving a loophole for online censorship counter to both the intent of the resolution and international standards, India didn't vote against it but merely abstained (Article 19 2014).

Moreover, despite disclosures based on top secret documentation revealing that India was the fifth-most targeted country for the NSA in addition to being used as a Special Collection Site to target other entities (Greenwald and Saxena 2013), India did not co-sponsor recent UN resolutions relating to privacy and surveillance in the digital age, be it at the Human Rights Council or at the General Assembly.<sup>2</sup> Nor did India co-sponsor various resolutions at the Human Rights Council and the General Assembly that touched on the rights to freedom of peaceful assembly and association online<sup>3</sup> or on the Internet-related human rights of specific groups, such as journalists,<sup>4</sup> women,<sup>5</sup> human rights defenders<sup>6</sup> or civil society.<sup>7</sup>

This is not, however, to say that India hasn't been involved in important resolutions that touch on Internet-related human rights at all. Apart from Resolution 20/8, India also co-sponsored UN General Assembly (GA) Resolution 68/243, which for the first time noted the importance of respect for human rights when using ICTs in the context of international security. India has also been known to take an active role in the negotiations around the resolution for information

2 See e.g. A/HRC/DEC/25/117, A/RES/68/167 and A/RES/69/166.

3 See e.g. A/HRC/RES/21/16 and A/HRC/RES/24/5.

4 See e.g. A/HRC/RES/21/12, A/RES/68/163 and A/RES/69/185.

5 See e.g. A/HRC/RES/23/2 and A/RES/68/181.

6 See e.g. A/HRC/RES/22/6 and again A/RES/68/181.

7 See e.g. A/HRC/RES/24/21.

and communication technologies for development, which is generally sponsored by the Group of 77 and China.<sup>8</sup> The latter resolution deals with a wide range of Internet rights-related issues, many touching on digital inclusion and social, cultural and economic technology-related rights.

Outside of the multilateral processes of the UN, India's record of support has been similarly uneven. For example, India reportedly declined to become a member of the Freedom Online Coalition, a partnership of 24 governments from the developing and developed world working to advance Internet freedom, despite having been invited explicitly by its initiators.

At the same time, however, India has acknowledged the importance of respecting human rights on the Internet in several multistakeholder Internet governance fora. For example, India mentioned freedom of expression and privacy and consumer rights as crucial Internet issues that need addressing today in its October 2013 submission to the UN CSTD Working Group on Enhanced Cooperation. This Working Group was tasked with bridging the gap between those who believe that multistakeholder approaches as they exist today serve Internet governance well, and those who seek greater government involvement. In that same submission, India also drew attention to the importance of multilingualization, and the affordability, reliability and quality of service, especially in developing countries.<sup>9</sup>

Similarly, in its submission to NETmundial, a global multistakeholder meeting to discuss the future of Internet governance, India stated that the 'same rights that people have offline must also be protected online', in addition to asking all stakeholders to commit to multilingualization and the 'development of locally relevant information, applications and services that will benefit developing countries and countries with economies in transition'.<sup>10</sup> The language on online and offline human rights in India's submission to the NETmundial was taken verbatim from UN HRC Resolution 20/8.

What a close examination, thus, reveals is a pattern in which India does voice support for the promotion and protection of human rights on the Internet, but generally shies away from expanding on the importance of civil and political rights, such as freedom of expression and

8 For the most recent resolution on this topic, see A/RES/69/204.

9 Permanent Mission of India to the United Nations Office (2013). 'Contribution to the Working Group on Enhanced Cooperation by the Permanent Mission of India to the United Nations Office'. UNCTAD, Geneva, 9 October. Available at: [http://unctad.org/Sections/un\\_cstd/docs/WGEC\\_IndiaMission.pdf](http://unctad.org/Sections/un_cstd/docs/WGEC_IndiaMission.pdf).

10 Ministry of External Affairs, Government of India (2014). 'Government of India's initial submission to Global Multistakeholder Meeting on the Future of Internet Governance, Brazil, April 23-24, 2014'. NETmundial, Sao Paulo. Available at: <http://content.netmundial.br/contribution/government-of-india-s-initial-submission-to-global-multistakeholder-meeting-on-the-future-of-Internet-governance-sao-paulo-brazil-april-23-24-2014/138>.

privacy. Instead, where it goes in detail, its focus seems to be resolutely on economic, social and cultural rights. Why this divide?

### **Historical drivers of India's foreign policy**

It would be easy to surmise that it is India's domestic agenda that drives its reluctance to speak out on issues such as privacy and freedom of expression on the Internet. Research has shown that India's cybersecurity concerns have indeed emerged as a crucial factor in determining its global policy on Internet governance (Kovacs 2014). But as others have also pointed out, India's 'attempts to deal with some of the concerns relating to material of [the] Internet which it considers problematic and potentially a threat to security has been frequently criticised' from within the country.<sup>11</sup> It is by now fairly well-known that India is already experimenting and building its internal surveillance systems without putting the appropriate strong safeguards in place, such as strong horizontal privacy protections in law, and parliamentary and/or judicial oversight and audit mechanisms.<sup>12</sup> In fact, as the Hindustan Times reported, intelligence agencies have been insisting that any future Privacy Bill in India should not cover their activities (Sharma and Tikku 2013). Similarly, various provisions of India's Information Technology Act (Amended), 2008, have come under attack for their chilling effect on freedom of expression. India's Supreme Court is currently hearing arguments on the constitutionality of Section 66A and Section 79 of the IT Act in particular.<sup>13</sup> Section 66A criminalises a broad range of free speech online while Section 79 concerns Internet intermediaries' liability for speech acts of their users.

The rights and security-related challenges that India, like many other countries, is grappling with at home in the new context dictated by the Internet, thus might well affect its foreign policy. But an analysis of India's stances at international fora in general indicates that there is a rationale endemic to its foreign policy at play as well. Two linked aspects that have marked India's foreign policy for more than two decades now are of particular importance. The first is India's aspiration for greater global stature and recognition, exemplified by its pursuit of a permanent seat in the UN Security Council. The second is the pre-eminence in its foreign policy of not human rights or democracy - although India values both greatly - but of the principle of sovereignty.

11 CCAOI (2014) *A study on the Indian perspective on Internet governance*, 16 April, p. 20.

12 For an overview of India's surveillance initiatives, see SFLC.in (2014) *India's surveillance state*. Available at: <http://sflc.in/wp-content/uploads/2014/09/SFLC-FINAL-SURVEILLANCE-REPORT.pdf>.

13 For an analysis of section 66A of the Information Technology Act, see Kovacs, A. (2014) *Regulating social media or reforming Section66A? Our Recommendations to the Law Commission of India*. Internet Democracy Project, New Delhi, August. Available at: <http://Internetdemocracy.in/reports/regulating-social-media-or-reforming-section-66a-our-recommendations-to-the-law-commission-of-india/>.

The latter has not always been the case. When India gained independence, it soon became clear that the state would put its might behind a hope to create a new language of human rights that was international and not bound by considerations of sovereignty. Thus, for example, in 1952, India helped steer an agenda at the United Nations that protested the introduction of apartheid in South Africa and the violation of basic human rights and fundamental freedoms that this entailed.<sup>14</sup> India's first Prime Minister, Jawaharlal Nehru was looking, it has been argued, for a pathway to create a new 'One World' that would adequately establish and reflect global human rights norms through the fledgling United Nations. Thus, Nehru has been said not to have been in favour of sovereignty that could block a global defence of human rights. Instead, he was described as a 'universalist' for whom 'national self-interest was not a narrow self-centred concept, but one in which there was no incompatibility with the interests of other nations' (Rao 2009).

While the position taken by Nehru continued to dominate India's foreign policy for several decades, a change began to emerge, however, in the early 1990s. Scholars like Dr. C. Raja Mohan, the head of Strategic Studies at the New Delhi-based Observer Research Foundation (ORF) (and co-contributor to this volume) have mapped this significant change in India's foreign policy. C. Raja Mohan said: "In 1948, when the United Nations declaration for human rights was being drafted, Nehru was clearly for a greater internationalism. That changed post 1991 as India began to grapple with charges of human rights abuse while tackling the rising insurgency in Jammu & Kashmir. In many ways this single event has continued to leave a deep impact on India's foreign policy ever since."<sup>15</sup> The change, as Dr. C. Raja Mohan points out, has ensured a decisive shift away from the 'internationalism' and global standard for human rights to a new language of sovereignty. India's interventions are based on the principle that 'a call for human rights must not lead to interference in internal affairs'.

The pre-eminence of the principle of sovereignty in India's foreign policy received a further fill-up as its aspirations to be recognized as a global leader also became increasingly pronounced during the same period. If India was not to alienate, in this quest, any of its potential allies among the G77 countries, an emphasis on sovereignty, rather than human rights, made further strategic sense. India's strategic relationships with China, Russia, arguably Iran and also its neighbours in South Asia can be considered of particular importance in this respect. As the authors of an influential report on India's foreign policy have noted: "Our approaches to international law, international norms are overly inhibited by anxieties about

14 'Statement by Mrs. Vijaya Lakshmi Pandit, Chairperson of the delegation of India, introducing the item on apartheid in the Ad Hoc Political Committee of the General Assembly', 12 November 1952. Available at: <http://www.anc.org.za/show.php?id=4971>.

15 Personal interview, New Delhi, January 2015.



the potential implications that our commitment to certain global norms may have for our options in the neighbourhood” (Khilnani 2012).

### **Impact on India's foreign policy as related to digital rights**

Where India's stances on matters related to the Internet are concerned, these two, linked tendencies of its foreign policy have had important consequences in two different ways.

First, they explain the contrast between India's relatively muted voice in many of the Internet rights related discussions that address civil and political rights on the one hand, and its much more active promotion of economic, cultural and social rights on the other. Advocacy with regards to the former in particular is often seen as a Western agenda; where digital rights are concerned, the announcement with much fanfare by then US Foreign Secretary Hillary Clinton, in January 2010, that a fairly narrowly conceived 'Internet freedom' was to be an explicit objective of the US foreign policy agenda did little to disavow such perceptions. Now that India seeks to expand its influence in the international community, as before, its preoccupation with the principle of sovereignty precludes it from taking any position that could make it appear a handmaiden to an interventionist Western agenda.<sup>16</sup> In contrast, the promotion and protection of economic, social and cultural rights has been high on the agenda of developing countries in particular for long, not in the least because they see these as tied so closely with the right to development. For many of India's strategically important partners, the promotion of development is more palatable than that of democracy, as it again avoids the need to comment on the political structure of other states, thus promoting the principles of non-interference and sovereignty.<sup>17</sup>

There is, however, a second, equally important though perhaps somewhat more circuitous way in which the driving forces of India's foreign policy affect the field of Internet rights

<sup>16</sup> For a recent example of an intervention in which India stresses the importance of sovereignty in the context of a human rights debate, though not specifically addressing digital rights, see Statement by Mr. Mayank Joshi, First Secretary, on Agenda Item 68: 'Promotion and Protection of Human Rights' (b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (c) Human rights situations and reports of special Rapporteurs and representatives at the Third Committee of the 69th Session of the UN General Assembly, New York, 29 October, 2014. Available at: <https://www.pminewyork.org/pages.php?id=2043>.

<sup>17</sup> In fact, where Internet rights are concerned, India generally seems more involved with UN GA resolutions that come out of its First and Second Committees, rather than the Third Committee. It is the Third Committee, on social, humanitarian and cultural affairs, that is generally considered the natural home for human rights resolutions at the General Assembly. The First Committee deals with disarmament and international security, while the Second Committee covers economic and financial matters.

– and this time one that is more specific to this area. They have also led India's foreign policy establishment to reject the multistakeholder approach to Internet governance, which it believes currently largely serves the interests of the US and its allies. Instead, India's diplomatic corps has been pushing proactively for a multilateral approach to Internet governance, with governments being the primary, and perhaps sole, arbiter of 'national interest'. The best-known illustration of this is India's proposal, introduced in the UN General Assembly in 2011, to constitute a UN Committee for Internet-Related Policies (CIRP).<sup>18</sup> The proposal wanted to set up a 'UN-like body' to govern the Internet, a multilateral body that will consist of '50 member states of the United Nations, chosen/elected on the basis of equitable geographical representation'. It was meant to provide 'equitable representation of all UN Member states, in accordance with the established UN principles and practices'. Clearly, the emphasis was on giving a seat to governments at the high table, while other stakeholders were to be reduced to mere 'advisory roles'.

While this particular proposal failed to get much traction and thus seems to be off the table for now, the push for greater government control over Internet issues within the framework of the sovereign state continues to guide most of India's foreign policy on this matter. Thus, for example, in the first half of 2014, India negotiated UN GA Resolution A/RES/68/302 on the 'Modalities for the overall review by the General Assembly of the implementation of the outcomes of the World Summit on the Information Society' to its conclusion on behalf of the G77 and China.<sup>19</sup> Considered by many in civil society as a step backwards vis-à-vis the World Summit on the Information Society (WSIS) processes themselves, the resolution firmly enshrines the overall review as an 'intergovernmental negotiation process', which promises to take inputs from all other stakeholders but does not define, or even so much as outline, the process for doing so.

As the goal of greater control over Internet governance processes – inspired by the larger goals of asserting sovereignty and achieving greater recognition of India's status and leadership – has become such an important objective of India's foreign policy, it is now becoming increasingly clear that any support for human rights will, at least for now, have to be subservient to it.

<sup>18</sup> 'India's Proposal for a United Nations Committee for Internet-Related Policies (CIRP). Statement by Mr. Dushyant Singh, Hon'ble Member of Parliament, India, on Agenda Item 16: Information and Communications Technology for Development.' 66th Session of the UN General Assembly, New York, 26 October 2011. Available at: <http://Internetdemocracy.in/wp-content/uploads/2014/07/India-UN-CIRP-Proposal-at-UNGA-2011.pdf>.

<sup>19</sup> Statement by Ambassador Asoke Kumar Mukerji, Permanent Representative of India to UN, during Adoption of Resolution on Modalities for Overall Review of Implementation of Outcomes of the WSIS during 68th Session of the UN General Assembly, New York, 31 July 2014. Available at: <https://www.pminewyork.org/pages.php?id=1956>.

This makes more intelligible, then, India's active involvement in resolutions such as resolution A/RES/69/204, discussed earlier, related to information and communications technology for development. Importantly, this resolution does not only highlight, in its operative part, a whole range of issues that are crucial for development in the era of ICTs, it also contains, in its introductory paragraphs, numerous references that support India's agenda regarding the global Internet governance architecture. In fact, when India made a statement in the UN GA Second Committee, where the resolution was under discussion, it explicitly highlighted the value it attached to both the development and Internet governance aspects of the resolution, stressing again, even in this context, its belief in multilateralism as the way forward for Internet governance as well as re-emphasizing the satisfaction it felt at the outcome of the negotiations for the modalities of the WSIS.<sup>20</sup>

It also explains, for example, why India could not agree to the NETmundial outcome document, which, while paying considerable attention to human rights, also firmly embraced multistakeholder Internet governance but remained mute about multilateral options and involvement. In fact, officials from the Ministry of External Affairs who have attended the conference are believed to have questioned whether it is useful for India to attend such conferences at all. In India's foreign policy agenda, the promotion and protection of human rights for now remains subordinate to broader strategic goals.

### **Implications for advocacy regarding the Internet and human rights**

What are the implications of all this for human rights advocacy in the digital context?

Though India is likely to continue to be receptive to initiatives addressing economic, social and cultural rights in a wide range of fora, getting the country on board to actively support a broader rights agenda that also addresses issues such as privacy and freedom of expression online will need careful consideration and will likely not be effective unless India's strategic concerns are taken into account in any strategy (see also contributions by Sachdeva and by Pai & Singh in this volume).

For one thing, such a strategy might prefer to start by focusing more on regional (e.g. the South Asian Association for Regional Cooperation, SAARC) and cross-regional (e.g. BRICS – Brazil, Russia, India, China and South Africa) fora, where the risk of a rights agenda being seen as a Western one is smaller, rather than on the traditional UN processes. If we see a

<sup>20</sup> Statement by Ambassador Asoke Kumar Mukerji, Permanent Representative of India to UN, on Agenda Item 16: Information and Communications Technologies for Development, at the Second Committee of the 69th Session of the UN General Assembly, New York, 13 October 2014, <https://www.pminewyork.org/pages.php?id=2016>.

multiplication of policy institutions in the world today, it is precisely because rising powers like India are not convinced that the existing ones serve their strategic interests best. More than the UN, it is arguable institutions such as the Shanghai Cooperation Organisation where much of the initial alignment of the countries involved on issues such as cybersecurity happens. Rights advocacy will need to recognize this reality.

Perhaps as importantly, however, is that any strategy will have to take into account India's positions on the debate on the architecture of Internet governance – not by discarding multistakeholderism, which improves the chances that the voices of human rights defenders are heard, but by actively promoting a reform of the system so that it becomes genuinely reflective of the concerns of stakeholders around the world.

At the global level, a variety of measures to improve the inclusiveness, transparency and accountability of the multistakeholder system are required. Proposals could include the carving out of specific spaces and moments for multilateral decision making on specific issues (for example to find greater resolution to jurisdictional issues), embedded within a multistakeholder landscape. They could also involve greater involvement of organizations such as the International Telecommunication Union (ITU) in particular aspects of Internet governance (for example through collaborations with organisations such as the Internet Corporation for Assigned Names and Numbers, ICANN) with decision making requiring a rough consensus among all those involved. While such proposals today are easily dismissed, Internet rights advocates who are concerned with improving human rights records worldwide might have a stake in considering them more carefully. If India's concerns are not being taken more seriously soon, it is likely that India will look to bilateral fora to address its main Internet-related concerns, many of which, as mentioned, focus around cybersecurity. In bilateral fora, the possibilities for human rights advocates to influence outcomes generally are even smaller than they are in intergovernmental processes at the UN.

As importantly, however, Internet rights advocates will also need to pay attention to the national level. It is by developing stronger mechanisms within India for multistakeholder participation in policy making around the Internet, that domestic voices that promote and protect human rights have the greatest chance of being heard and of impacting related policies in the shorter term. While foreign policy is often remarkably disconnected from what happens within a country, a strong multistakeholder model within India could re-establish that connection. At the same time, as a consensus among Indian stakeholders on particular issues is being built, the Indian government will also have a far larger circle of ambassadors for its ideas than just its bureaucrats, as stakeholders from India participate in a considerably wider range of fora on a consistent basis than the government is able to do. A strong multistakeholder system within India thus also strengthens India's position in multistakeholder models of Internet governance as they currently exist at the global level.

The promotion and protection of human rights in the context of the Internet, the strengthening of multistakeholderism at the national level, and its reform at the global level are intimately intertwined.

*Kudrat Virk*

## **Whither the Responsibility to Lead? India and R2P**

*India's dissent from the principle of 'responsibility to protect' (R2P) comprises a complex and nuanced narrative, but is often mistaken for a parochial devotion to sovereignty to the neglect of human rights. This view is enabled, in part, by India's reluctance to engage with R2P more robustly and honour a tradition of standing up for 'just causes'.<sup>1</sup>*

### **Introduction**

Could there be anything “more preposterous in law or in natural reason” than a state claiming sovereignty to commit crimes against humanity with impunity?<sup>2</sup> A rhetorical question posed by none other than India, calling for economic sanctions and threatening more against the apartheid regime in South Africa in 1977. India did not merely accept a responsibility to react, but urged that the international community had a moral obligation to stand up against the South African government's gross denial of human rights to a majority of its citizens. Yet, in the present-day debate on the principle of responsibility to protect (R2P) this sense of moral purpose has proved more elusive, with India cast – rather simplistically – as a country fixated on sovereignty in a highly emotive and polarizing international discourse; its commitment to human rights and liberal values questioned, sometimes disparagingly, by R2P proponents. Despite the growth of interest in India as an emerging democratic power, its perspectives on human rights, sovereignty, and intervention have continued to be poorly understood.

### **Complexity and nuances in India's position on 'saving strangers'**

Over a million lives were lost to state repression in then East Pakistan (now Bangladesh) in 1971, while the United Nations (UN) Security Council – hobbled by the politics of the cold war – failed to act. Later that same year, India acted unilaterally, intervening militarily to bring a halt to the brutality. Viewed through the lens of post-partition politics in South Asia, India's use of force was driven by a mix of humanitarian and non-humanitarian reasons. The full-scale invasion effectively dismembered Pakistan, India's arch-rival in the sub-region,

<sup>1</sup> This essay draws and builds on Virk (2014) and Virk (2013).

<sup>2</sup> United Nations Security Council (UNSC) (1977), 'Security Council: 32nd year: 1989th meeting', 22 March, p. 7. Available at: UN Official Document System (ODS).

with the creation of Bangladesh. Even so, the military operation ended the humanitarian crisis, with Indian troops withdrawing in a matter of months without acquisition of territory. Many have characterized it as a classic case of ‘humanitarian intervention’. But India itself did not justify its actions as such, even though it defined the provoking situation as genocide and invoked language redolent with genuine humanitarian concern (Wheeler 2000).

Fast-forwarding to the post-cold war period, until 2005, India was a blunt and outspoken critic of the notion of ‘humanitarian intervention’ – the precursor of R2P – and fiercely castigated the North Atlantic Treaty Organization (NATO) for its illegal and illegitimate ‘humanitarian war’ against Slobodan Milosevic over ethnic cleansing in Kosovo in 1999. India only reluctantly, and at the eleventh hour, signed up to the UN General Assembly’s endorsement of R2P at the 2005 World Summit, after finding itself isolated in its obstructionist posture (Bellamy 2009: 88). Still, the country has since withstood temptation to deny the existence of the emerging norm or to draw back from its broad position of support for key elements of R2P, despite contesting the norm in its implementation.

It would be tempting to garb India’s unwillingness to muster fully behind first humanitarian intervention and later R2P in a black box of rejectionism, and to see it purely in terms of a parochial interest in protecting the country’s soft underbelly of Kashmir – a territory that it has disputed with Pakistan since independence in 1947. Security forces deployed in Indian-administered Kashmir have time and again been accused of human rights abuses by civil society organizations, including Amnesty International and Human Rights Watch. New Delhi has invested significant effort in guarding the situation against any external interference, but which the notion of ‘humanitarian intervention’ could unravel. Beyond Kashmir, India also has a fine and intricate social fabric, vulnerable to violent disturbances – as the communal riots in the western state of Gujarat in 2002 showed – and which is enmeshed in a wider, conflict-prone sub-region (see Mukherjee & Malone 2011: 90-99). Over time, and through experience, this national and sub-regional context has bred a preference – somewhat imperfect in practice – for upholding the principles of sovereignty as autonomy and non-intervention. In particular, India’s intervention in Sri Lanka in 1987-1989 has left an indelible impression. The Indian Peacekeeping Force (IPKF), regardless of its intentions, was drawn into a vicious conflict and forced ultimately to withdraw in failure, after suffering about one thousand casualties.

Yet, India’s interventions in East Pakistan and Sri Lanka also allude to complexity and nuances in its perspectives on the problematic of upholding human rights in a world of unequal states. As a non-permanent member of the UN Security Council in 1991-1992, India – despite reservations – did not obstruct an effort to address the plight of the Kurds fleeing Saddam Hussein’s repression in northern Iraq, abstaining in a key vote on the situation in April 1991, and subsequently supported the US-led intervention to protect the humanitarian

relief effort in Somalia in December 1992. Through the 1990s – the decade of ‘humanitarian intervention’ before R2P – New Delhi tolerated a number of cases in which human rights protection was invoked as a justification to act militarily, including the US-led invasion of Haiti in 1994; the Economic Community of West African States’ (ECOWAS) unilateral intervention in Sierra Leone in 1997; and the UN-authorized operation in East Timor in 1997. Hence, while India was a persistent objector to the principle of humanitarian intervention (Chimni 2001: 108-109), it has not been – as I (2013) have argued elsewhere – so unrelenting or judgemental in practice. I am not suggesting that India necessarily bought in to the case for greater interventionism on humanitarian grounds, but that there were limits on its ability and/or willingness to oppose it.

Furthermore, India has been one of the largest and most consistent contributors to UN peacekeeping operations. Over a span of six decades, nearly 183,000 Indian personnel have served as ‘blue helmets’ in 44 missions worldwide (Permanent Mission of India to the UN 2014).<sup>3</sup> In the aftermath of failures in Somalia, Rwanda, and Bosnia and Herzegovina, UN peacekeeping has evolved into a multi-dimensional exercise, with the protection of civilians (POC) at its core (Holt & Taylor with Kelly 2009: 2-4). Although POC and R2P are distinct concepts – “siblings, not twins” (Popovski 2011) – they share a common moral purpose: respect for, and protection of, human rights. Indian troops have deployed to several UN missions with an explicit POC mandate, including the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), where the humanitarian situation is one of the world’s most complex; although India has often argued for greater circumspection in the expansion of such mandates in a context of scarce resources for peacekeeping operations. Be that as it may, an overly narrow focus on New Delhi’s position on R2P – or a specific crisis in the spotlight at any given time – risks an overly simplistic understanding of the country’s approach to human rights protection beyond its borders.

Since conceding to the consensus at the 2005 World Summit, India has not withdrawn its support for R2P’s normative framework. Neither has it given up the contest over its application – when, how, and by whom – in hard and complex crises where human rights are at grave risk. Despite the refinement of R2P into a broad three-pillared approach that incorporates prevention and capacity-building (pillar two), and acknowledges the state as a cornerstone of the human rights protection architecture (pillar one), military intervention (pillar three) has often been its dominant expression, with the question posed as: to intervene or not to intervene. Likewise, India has barely engaged, if at all, with

<sup>3</sup> India’s record of contributions to peacekeeping is one of the longest and most constant, stretching back to 1953-1954 when it provided a custodian force to facilitate the return of prisoners of war in Korea. Over the past fifteen years, it has consistently ranked as one of the top three troop-contributing countries to UN peacekeeping operations.

R2P elements other than ‘humanitarian intervention’ (Mohan 2014: 3). Broadly speaking, pillars one and two resonate with India’s long-standing emphasis on the state as the primary bearer of responsibility for the well-being of its people, as well as its advocacy of greater international support for development. That being the case, India has struggled to position itself clearly in the debate on R2P’s more contested coercive pillar. ‘Humanitarian intervention’ remains the uncut Gordian knot – an unresolved tension between India’s default preference for non-intervention and non-use of force on one hand, and its soft acceptance of non-indifference in the face of mass atrocities on the other. In the absence of an easy answer, caution and circumspection continue to be India’s watchwords, its response to calls for the application of R2P in particular cases governed by a pragmatic assessment of the immediate exigencies – humanitarian and non-humanitarian – of the situation at hand.

### **The moderation of dissent from R2P: from Sri Lanka, via Libya, to Syria**

Beyond the corridors of the UN in New York, India has tended to shy away from the R2P framework. It was something of a surprise to most when New Delhi invoked the language of R2P, in a statement on the humanitarian crisis generated by the final phase of Sri Lanka’s civil war in 2009. This statement emphasized the responsibility of the Sri Lankan government to protect its citizens, although it also held steadfast against any external interference in the situation (Virk 2013: 80). Then, in 2011, India – back on the UN Security Council after a period of eighteen years – confronted the crisis in Libya under the glare of sharper public scrutiny and greater pressure for action to stop the mounting violence. Despite expressions of concern about a rush to use force with potentially harmful consequences, India abstained – with eyes wide open – on Security Council resolution 1973 authorizing a no-fly zone and sanctioning the use of force by NATO to protect civilians. Though as the aim of the NATO intervention shifted to a policy of regime change, India was one of the fiercest critics, stung, in particular, by what it saw as a breach of the mandate granted by the Security Council and lack of NATO accountability to the body.

The Libyan case shaped India’s subsequent response to the crisis in Syria. The blowback from Libya included a split among the permanent five (P-5) members of the UN Security Council, with China and Russia opposed to any resolution with wording that could be used to pursue a similar policy of regime change in Syria. India shared Chinese and Russian concerns, but its positions shifted over the course of 2011 and 2012, while it remained on the Security Council. During this period, the Council formally considered six resolutions on Syria. India did not cast a negative vote against any one of these, including three drafts vetoed by China and Russia. It abstained on the first resolution, tabled in October 2011 and

defeated by the double veto, condemning the violence and threatening sanctions. But India subsequently voted in support of the other five resolutions, including a draft in July 2012 – again vetoed by Beijing and Moscow – that threatened sanctions for non-compliance with specified measures intended to protect civilians and facilitate the end of hostilities. The changes in India’s position were guided by the specifics of each resolution, as much as by the deteriorating humanitarian situation on the ground, but also by shifting political dynamics and growing concern about stability in a region vital to its economic and security interests (Virk 2014: 143-144).

Even so, in 2011, India, Brazil and South Africa (IBSA) faced stinging criticism from human rights organizations, as well as Western governments, for taking up position alongside China and Russia in the Security Council on the question of Syria, particularly for their resistance to the Western-sponsored October draft resolution. Although the IBSA countries were split over Libya – South Africa, unlike India and Brazil, voted in favour of resolution 1973 – the trio made a greater effort to coordinate their actions on Syria, even sending a joint delegation to Damascus in August of the year. However, India’s response to the Brazilian concept of ‘responsibility while protecting’ (RwP) – raised in November 2011 – was somewhat lukewarm. Initially, India publicly said almost little to nothing beyond extending the Brazilian initiative a pro forma welcome (Benner 2013: 7), leaving its response open to interpretations ranging from rebuff to support. Later on, in 2012, there was a clearer expression of encouragement, with India’s ambassador to the UN, Hardeep Singh Puri (2012), noting that “if R2P is to regain the respect of the international community, it has to be anchored in the concept of RwP”. But, there was little else, with Brazil itself seemingly unwilling or unable to push the initiative forward by then.

While India’s wariness and reluctance to support an interventionist approach to human rights protection may frustrate R2P activists, it is worth taking a moment to consider the extent to which its dissent from the norm has softened over the past twenty-odd years, and in particular since the 2005 World Summit. At the beginning of the 1990s, when the issue first appeared on the international peace and security agenda, India – in common with many others – did not accept human rights protection inside a state as an appropriate or legitimate basis for action – military or other – by (even) the UN Security Council, and viewed it with concern as an abridgement of the principle of sovereignty. Then, in 1999, in the aftermath of the controversial NATO intervention in Kosovo, UN Secretary-General Kofi Annan threw down the gauntlet, challenging the international community to do better by way of preventing mass atrocities. India stood opposed to the creation of any new rule that might make an explicit exception for ‘humanitarian intervention’ to the principle of sovereignty, despite some ambivalence in practice. By Libya in 2011, India was arguing neither

for sovereignty, nor against the use of force per se for humanitarian purposes, but about the modalities for such intervention. Dissatisfying for opponents and proponents alike of R2P-based intervention, and laced with some measure of ambivalence, but an adjustment to circumstances nonetheless.

### **An interest-based calculus: R2P and India's broader foreign policy objectives**

What then are the broader foreign policy interests and objectives that have framed this reluctant accommodation? India's desire for a permanent seat on an expanded UN Security Council has played a key role. For nigh on two decades now, India has pressed its case (see Gowan 2013b). While the prospects for comprehensive UN Security Council reform any time soon remain poor, garnering broad-based support for the country's candidature for permanent membership is an immediate Indian objective. Its achievement would affirm, for New Delhi, its status and prestige as an emerging power in global politics. This quest has, in turn, generated a concern for reputation – India did not want to be seen as the deal-breaker at the 2005 World Summit (Virk 2014: 135). It is also worth noting that India's 2011-2012 tenure on the UN Security Council, including its position on Libya (in particular, its abstention on resolution 1973), inspired a ream of domestic commentary, with much of it focused on its impact on New Delhi's bid for permanent membership (Hall 2013).

In addition, as a still-emerging power with a population of over 1.2 billion and growing, India has a material need for resources that has made “a coherent articulation of ideational interests difficult” (Mehta 2011: 98; see also Virk 2014: 137-138). The country is, for instance, already the fourth largest primary energy consumer in the world, with demand set only to increase in the immediate to medium-term future. India, which imports more than 80 per cent of its crude oil (mainly from the Middle East), is expected to be “the largest single source of global oil demand growth after 2020” (OECD/IEA 2013: 4). Energy security is essential for India's economic growth, which is, in turn, a clear and present imperative to achieve socio-economic transformation at home and to sustain its ambition for greater influence in global decision-making fora. This has meant cultivating relationships with regimes of different stripes, making new friends while maintaining older ties, and trying to accommodate competing principles and interests in a fine balance from one situation to another.

Take the example of Syria in 2011-2012. India was caught between its anger with NATO for overstepping the UN Security Council's authority in Libya and its serious concern about the potential for a repeat of mission creep to regime change in Syria, on one hand, and its anxiety about the impact of volatility in Syria on regional stability in the wider Middle East, on the other. Not only was India's position framed mainly by a security, rather than a human rights, perspective, but also New Delhi's search for a way through its dilemma was compli-

cated by the prevailing political dynamics among its key partners. China and Russia adopted an uncompromising stance against any strong measures, paralysing the UN Security Council and creating a rift within the BRICS (Brazil, Russia, India, China, and South Africa) bloc, with India, along with Brazil and South Africa, showing greater flexibility towards a need for the Council to craft a united response to the deteriorating situation on the ground. The US – a key strategic partner for India – and European countries, including the United Kingdom and France, sought a firmer stand against President Bashar al-Assad's Syrian regime. India's relations with key Middle Eastern players – including Iran, Syria's main ally in the region, and Saudi Arabia, an active proponent of regime change in Damascus – added further complexity to the country's diplomatic calculus (see Taneja 2013).

### **Beyond self-interest: concerns about the risk of misuse and unintended harm**

At the same time, this should not detract from the genuine concerns that lie behind India's discomfort with intervention under the rubric of R2P; ones that lie beyond how voting one way or another in the UN Security Council might affect the country's foreign policy interests and objectives. Take but two. The first relates to proper authority: who decides, and how, that R2P should be implemented. In the lead-up to the 2005 World Summit, India held that no new norm was required for the international community to react to cases of extreme human rights violations; the UN Security Council was sufficiently empowered to act in exceptional circumstances (as it had in Somalia in 1992). Rather, the problems were selectivity and political will: the Security Council failed to stop the Rwandan genocide of 1994 – as clear-cut a case as any for immediate intervention – because the major powers were unwilling to act. This, in turn, related to the unrepresentative and undemocratic nature of the Council, so India argued.

With the endorsement of R2P in 2005, the problem – as it frames the Indian position – has been the risk of misuse of the new norm for particular interests by particular powers, such as regime change in Libya, through coercive measures. The side-lining of the African Union's (AU) mediation efforts and the Security Council itself, once the use of force had been authorized in Libya, has sharpened these concerns. This line of criticism is closely linked to the case for UN reform – and India's own bid for a seat at the Security Council's decision-making table – but the issue remains: the lack of transparency and accountability in the workings of the Council weaken the legitimacy of its actions, including the implementation of R2P. One size does not fit all, and 'humanitarian' action – no less, no more than any other in international society – is subject to mixed motivations and situational judgement. Whose, matters. The second relates to the unintended, and ultimately non-humanitarian, consequences of an overemphasis on R2P's interventionist pillar. Again, Libya illustrates. From India's view point, the UN Security Council – driven by the major Western powers – rushed to act without full

knowledge and consideration of the situation on the ground, and without allowing political efforts the time to potentially end the crisis peacefully.<sup>4</sup> Three years on, Libya is in chaos with human rights a grave concern, while the spill-over from the fall of Muammar Qaddafi's regime has included the destabilization of Mali and the broader Sahel region (CCR 2014: 19-20). Not to mention that the blowback from the mission creep to regime change widened divides on R2P and split the UN Security Council, rendering it unable to provide a collective response to Syria's humanitarian crisis. For India, Libya is not an isolated case of the limits of using force to protect human rights in complex situations. Through the 1990s, for example, India routinely questioned the effectiveness of force to protect civilians, calling attention to failures such as Somalia, while cautioning against a road to hell paved with good intentions. However, India itself has failed to move beyond criticism, to take the initiative in the debate, and to play a more active role in crafting non-coercive and preventive mechanisms.

### Claiming moral leadership

My intention here is not to argue the merits and demerits of R2P-based intervention, but to point out that India has something to say. What India has failed to do, though, is to take ownership of the debate on R2P in a clear voice (Chaudhuri 2013). In this regard, getting away from the notion that R2P is a Western norm, and beyond the confines – false, as it happens – of West/non-West thinking on it, would be a start. Within India, there has been a tendency to equate the resort to coercive measures for human rights protection with Western expansionism and ambition to shape, and dominate, the world order. A straight line has often been drawn from the NATO intervention in Kosovo to the wars in Afghanistan and Iraq and to the situations in Libya and Syria (Virk 2014: 136-137). In this, India is not alone. An equal number of commentators elsewhere have seen R2P as a normative framework into which countries such as India have to be socialized. This is problematic in a number of ways, not least for reducing the championship of human rights to agreement with one set of ideas. It also ignores the role that countries beyond the West, in Africa and Latin America, have played in the development of the R2P norm. The African Union's Constitutive Act of 2000 – embraced before the formal articulation of R2P by the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) – gives the organization a right to intervene to prevent and protect against egregious human rights abuses on the continent. Seeing R2P as the reflection of a more diverse group of perspectives, can help India remove – to some extent – the reflexive suspicion of Western intentions that has limited its engagement in the wider discourse. Civil society organizations and networks can contribute by drawing greater attention – through their activities and publications – to this wealth of views from within the South and by exposing the falsity of a simplistic North-South divide on

<sup>4</sup> United Nations Security Council (UNSC) (2011) 'Security Council: 66th year: 6498th meeting', 17 March, pp. 5-6. Available at: UN Official Document System (ODS).

the issue, thereby promoting, informing, and influencing a richer public debate within India (Morada 2014: 83-84).

In articulating its perspectives more clearly, and influencing the development of the norm, India can also do more to work with democratic emerging powers such as Brazil and South Africa (see Lugon Arantes 2014: 46). There are important differences in the foreign policy objectives and interests of these countries, and it would be a mistake to assume an automaticity of convergence in their positions on R2P. Unlike India, South Africa, for example, helped to build consensus behind R2P at the 2005 World Summit (Bellamy 2006: 162). Yet, the IBSA countries share a preference for the political and peaceful resolution of conflicts, and worked together to try and mediate the crisis in Syria in 2011, sending a joint delegation to Damascus to facilitate a cessation of the violence. The mission failed and the three countries could not sustain their effort to make an appreciable difference to the crisis, raising questions, not only about the point of the joint exercise, but also about their ability to make an impact in times of crises (Gowan 2013a). The Brazilian notion of RwP has similarly not been developed further. In the case of RwP, part of the problem lay, perhaps, in that it was not a jointly crafted initiative, but one in which Brazil had to seek buy-in from India (and its other IBSA partner, South Africa) the same as any other country, and which arguably overestimated (even presumed) the degree of like-mindedness among the trio. Neither India nor Brazil nor South Africa, in this respect, has the clout yet to go it alone, and if these three countries are to take on the challenge of redefining the debate on R2P – be it through a reinvigoration of RwP or otherwise – building greater convergence among themselves on its contested elements would be a useful first step.

Finally, it is easy to suggest that India should invest greater resources to develop an effective non-coercive approach to human rights protection; the harder task relates to how. The country is still only an emerging power. It carries the burden of expectations, but has yet to develop the capacity to meet the demands placed by its diplomatic ambitions. In the words of Amitabh Mattoo (2014), "Even today, the IFS [Indian Foreign Service] has some of the most talented and hard-working diplomats of any country in the world, but they are overstretched, too often lacking the expertise needed to negotiate effectively on complex contemporary issues and confined in protocol silos which are out of tune with contemporary realities." As India's builds its ability to develop – as well as explain – policy on the range of issues that demand its attention, and of which R2P is but one, civil society (universities, think tanks, and other research institutions) and human rights organizations, in particular, could be a rich resource of ideas, and supplement its efforts, to try and craft a more persuasive argument, a more concrete contribution, and a more effective and much-needed alternative to force to address the dilemmas of human rights protection (Madan 2013: 108-110).

The battle of ideas is never over. The debate on ‘humanitarian intervention’ was at its lowest ebb, in the aftermath of the divisive NATO intervention in Kosovo in 1999, when R2P emerged to reclaim the normative ground. The new norm was contested, even before the controversial intervention in Libya in 2011, and has seemed to lose momentum since. But, it is premature to talk about the demise of R2P. Although only time may tell whether the Libyan case will have been its nadir or high watermark, it is worth bearing in mind that the basic idea of R2P is embedded in a broader, more robust framework of human rights protection. It has also been a dynamic concept from the outset. India must not hide from the challenges it raises, if the country is serious in its ambition to help shape the evolving global world order. History, as much as ambition, behaves it.

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