Course Description:

In 1993, just prior to the UN World Conference on Human Rights held in Vienna, countries from Asia gathered at Bangkok to attend a regional human rights meeting. They issued the 1993 Bangkok Declaration, which expressed the particular concerns of Asian countries in relation to human rights, economic and developmental priorities and how states treat individuals and groups within their territorial boundaries.

This course critically examines the universalist aspirations of international human rights law with specific reference to Asia, which contains 60% of the world’s population and is perhaps the most diverse world region in terms of culture, religion, political systems and standards of economic development. It has its fair share of systemic human rights violators. Is human rights law the new global 'standard of civilisation' and if so, is it genuinely 'universal' or a form of neo-colonial moral imperialism, working in tandem with neo-liberal economic policies which advantages some states while injuring others?

Through critical inquiry and specific case studies, the course seeks to make concrete the implications of the application of ‘abstract’ principles of international human right law and to shed light upon how human rights may influence notions of domestic governance and how far it can genuinely advance the promotion of human dignity and social welfare. Where appropriate, references will be made to global norms as well as regional human rights standards from the Inter-American, European and African systems, as useful comparators.

This course is not merely about examples of human rights violations in the region of 'Asia'. Asian case studies certainly provide fodder for our discussions; this course also critically interrogates human rights on its own terms, regarding its claims to universality and indivisibility.

This specialist and critical human rights law course will be of interest to students interested in international law, Asian legal studies, comparative public law, jurisprudence, international relations and politics etc...While a background in public international law is recommended, it is not required. Nor is any prior knowledge of human rights law - you will acquire a sound understanding of human rights theory and practice from this course.

Course Objectives:

Course readings are tailor-made and have been carefully selected and developed. These will be distributed to students, along with a list of human rights documents and instruments. The readings have been selected with the following objectives in mind:

(a) To establish a clear general legal framework for the human rights topic in question, to ensure a firm grasp of history, theory and doctrine. This will include the chief human rights instruments
(treaties, statutes, foreign policy papers, ministerial statements, official reports, etc) governing a particular area.

(b) To identify the primary controversies and critiques associated with the topic

(c) To situate (a) and (b) both in terms of doctrine (black letter law) and critical perspectives, within the Asian context, through Asian case studies, with comparative references beyond Asia, where illuminating.

(d) To identify the nature of human rights scholarship employed - our starting point is the 4 different approaches towards human rights identified by Dembour, 'What are human rights? Four schools of Thought' (2010) 32 Human Rights Quarterly 1

- Natural Scholars - human rights as 'given'
- Deliberative Scholars - human rights as agreed upon
- Protest Scholars - human rights as fought
- Discourse Scholars - human rights as talked about.

At the end of this course, the student should have acquired

1. **An understanding of the legal framework of the rules and regimes of international human rights law, with a focus on case studies drawn from Asia.** They should be familiar with both the philosophical dimension of human rights as well as the use of human rights as a political strategy in international relations and domestic politics.

2. **A familiarity with the history** which informs the formulation of human rights norms, the creation of human rights institutions and processes, starting with the birth of human rights law in the aftermath of World War Two and the Nazi holocaust, to contemporary post 9-11 human rights related developments.

3. Through engaging with theory and critique, they should be equipped to **construct a critical framework** for analysing the claims of human rights and the efficacy of human rights norms in shaping domestic governance and international relations.

4. **A thorough understanding of the perspectives of Asian states towards human rights law, as well as competing views from non-state actors and jurists.** This will facilitate a deeply contextualized understanding of human rights issues within Asian societies, through examining case law, international instruments, policy and state interactions with UN human rights bodies. They should be able to identify the particularities, problems and priorities of
Asian states in this field and to compare this with international and regional standards and attitudes towards human rights.

Outline of the Course

The course is essentially divided into three parts.

Seminars 1-4 deal with the history, theory and doctrine of human rights, and the chief norms centred around the International Bill of Rights (Universal Declaration on Human Rights, International Covenant on Civil and Political Rights, International Covenant on Socio-Economic and Cultural Rights). This includes ‘big questions’ like the debate between universality and cultural relativism, how religion and culture speak to rights ideology, how indivisibility is dealt with, which human rights norms are given priority. It digs deep into fundamental questions: If law is concerned with a theory of human good, what does human rights law contribute to an understanding of human flourishing in a multicultural, postmodern world? Is human rights law the modern day ‘standard of civilisation’? Is it a form of imperialism or a form of benevolent global ethics? Is it designed to prevent catastrophes or is it a comprehensive (and contestable) code governing social relations?

Seminars 5-6 focus on issues of sovereignty, implementation and enforcement of human rights, through an examination of enforcement mechanisms and processes at the domestic, regional and international (United Nations) level. In particular, special attention is devoted to examining the ASEAN sub-regional human rights regime, national human rights institutions and the rights jurisprudence of Asian courts.

Seminars 7-10 deal with more focused topics, including the human rights of groups such as minorities and indigenous peoples in Asia, the right to self-determination, women’s human rights, globalisation and human rights, and migrant workers. The difference between human rights and a human welfare/development approach is interrogated.

Typically, the topics are:

SEMINAR ONE - History and Theory of International Human Rights Law in and Beyond Asia
The primary objectives and themes of the course are discussed. The role of Asian states in the early days (before the League of Nations, United Nations and Bandung Conference of 1955 which gave birth to the ‘third world’) of human rights development is highlighted. We thoroughly examine the history and text of the Universal Declaration of Human Rights as the accepted baseline for human rights law.

SEMINAR TWO - Universal Human Rights and Challenges – Is human rights a liberal project based on normative individualism? We examine the chief detractors, with a focus on Asian
perspectives and the ‘Asian values’ debate and its contemporary forms. We also evaluate the impact of the proliferation and politicization of human rights, and consider whether law is just successful politics.


SEMINAR FOUR - Three Generations of Rights, Indivisibility: State Liability and Accountability: in particular we examine the justiciability of socio-economic rights, drawing from cases from South Asia and the Philippines, consider how to identify socio-economic rights violations and to evaluate whether these rights are progressively realized. Our case study is the human right to water and the human right to food

SEMINAR FIVE International & Regional Approaches Towards Human Rights Promotion & Protection in Asia (Enforcement I). We consider what form a human rights body should take within the ASEAN context and evaluate the existing system.

SEMINAR SIX: National Human Rights Protection: The Role of Courts and National Human Rights Institutions (NHRIs) in Asia (Enforcement (II). We consider the Chinese conception of rights, contrast interpretive approaches of Singapore and Hong Kong courts, examine the reception of human rights in Japanese courts and consider the work of National Human Rights Institutions in Malaysia (Suhakam), Indonesia, (Komnas Ham), the Philippines and Myanmar.

SEMINAR SEVEN - Self Determination, Democracy & Minority Rights in Asia, the scope of external and internal self-determination is examined, including cases studies from China/Tibet and Xinjiang, Pakistan/Bangladesh and Myanmar, as is the relation of human rights and colonialism.

SEMINAR EIGHT - Rights of Indigenous People & the Right to Development in Asia - international standards drawn from the United Nations and International Labour Organisations frame the discussion of indigenous rights in Asia, with attention paid to the case of the Ainu in Japan and the Orang Asli and Penan in Malaysia. The voices of Asian indigenes is examined from a study of non-state documents such as the Declaration on the Rights of Asian Indigenous Peoples.

SEMINAR NINE - Women’s Human Rights in Asia – we study the unique and disproportionate harms suffered by Women in Asia, how this might differ from the situation of women beyond Asia, the use of CEDAW within and without courts, and it Optional Protocol. Topics include the feminisation of poverty, the political and socio-economic rights of women,
such as workplace equality, and the problem of gender-based violence against women (e.g. dowry murder, honour killings and femicide) and the public-private divide.

SEMinar TEN = Globalisation / Transnational Issues: Migrant Workers Problem in Asia – we examine the impact of globalization on human rights, the nature of the right to development as set out in the Declaration on the Right to Development, and the situation of migrant workers in Asia, drawing from the frameworks established by the UN, International Labour Organisation and ASEAN, as well as formal domestic processes and informal methods.