

AN ASIAN PERSPECTIVE OF HUMAN RIGHTS

There is the controversy over whether human rights are a western concept. Western countries often seek to impose their standards through human rights. It is contended that human rights are alien to Asian culture. The article examines some of the issues in the Asian context and concludes that human rights are nothing new, but have long been nurtured and cherished by Asian societies, and have a strong religious and social backing in such societies. Further, it is pointed out that the attempt by western powers to utilise human rights as an instrument of political pressure is resented and due regard should be paid to regional particularities.

THERE is a debate over whether human rights are a western concept, and human rights are being imposed on the peoples in the Asian region by the western countries. It is contended that human rights as propounded by the West are alien to the Asian culture, and that Asian countries have their own set of norms and standards in this regard. The seriousness of this controversy lies in the fact that it challenges the universality of the human rights introduced by instruments such as the Universal Declaration of Human Rights (adopted on 10 December 1948), the International Covenant on Civil and Political Rights (which came into force on 23 March 1976, hereinafter referred to as the 'Political Covenant'), the International Covenant on Economic, Social and Cultural Rights (which came into force on 3 January 1976, hereinafter referred to as the 'Economic Covenant') and other allied instruments. Let us examine these contentions carefully to ascertain where the truth lies.

A. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted unanimously by all the member States that constituted the United Nations on 10 December, 1948. It was an expression of the commitment of all the member Governments of the organised World community at that time, *viz*, the UN, to uphold the basic civil, political, economic, social and cultural rights of all peoples, irrespective of any differences, on the all levelling criterion of being members of the human family. This is illustrated by the first paragraph of the preamble to the Declaration, which states that "recognition of the inherent dignity and of the equal and inalienable rights

of all members of the human family is the foundation of freedom, justice and peace in the world.”

From this it is clear that the premise upon which the Declaration is founded is none other than equality, on the basis of being “members of the human family”. It is to be observed that, this “golden thread” runs through all the 30 Articles of the Declaration.

Another aspect of the Declaration which must be stressed here is that the rights and freedoms set forth therein are to be observed and enforced, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Article 2). Thus we see that these rights are to transcend all boundaries and any possible divisions of the human race, and thereby give the Declaration the truly universal character it was intended to have.

Then how is it that universality is being questioned by some? In our assessment, this situation has come about, not due to any lack of universality in the freedoms and rights incorporated in the Declaration, but due to the manner they are sought to be enforced by the Western nations.

B. Religious and Cultural Background

A striking feature of the Asian societies is that they are built around religious concepts, and are very much influenced by religious norms. It is pertinent to note here that all the major religions practised in the Asian region, viz, Buddhism, Hinduism, Islam and Christianity, are in accord with the freedoms and rights enunciated in the UDHR. In fact the religious tradition of a number of these religions go beyond some of the rights set out in the Declaration. For example, in Buddhism, the *Singalovada Sutta* of the *Dighanikaya*, spells out the duties of a young householder to the “six quarters” (categories of persons). He is required to treat, “the parents as the East, teachers as the South, the spouse and offspring as the West, friends and companions as the North, servants and work people as the nadir and the religious as the zenith.”¹

In the Asian region the relationship between the parent and the child is a special one. It goes beyond the concepts enumerated in the human rights documents. It is the duty of the parents to look after and maintain the children whether they are born within the wedlock or outside. The responsibility of maintaining an illegitimate child by the father is based on the concept of blood ties.² The children are also required to reciprocate when the parents are in indigent circumstances. For example, this reciprocity of support, though not found in any of the human rights documents,

¹ LPN Perera, *Buddhism and Human Rights* (1991), at 121.

² S Goonesekera, *Sri Lanka Law on Parent and Child* (1987), at 409.

is well founded in Sri Lankan law. The traditional Sinhala law, known as the Kandyan law, recognised this right, and had its own devices for ensuring such support.³ Thesawalamai, a personal law applicable to the Tamils in Sri Lanka, also provides for this right.⁴ Even in Muslim law, children with means are under an obligation to maintain their indigent parents.⁵ Under the general law, which is applicable to all persons in Sri Lanka, this right is expressly recognised, as was held in the case of *Ambalavanar v Navaratnam*.⁶ In this case, the Roman-Dutch Law principle that children are liable to support their parents who are in indigent circumstances was held to be applicable in Sri Lanka as part of the general law. It is striking to note, "... the Common Law in England and the United States of America (where) neither parent nor child is bound to support the one or the other."⁷

The countries in the Asian region are inhabited by heterogeneous communities. The family unit is the focal point of unity. However, according to the conventional human rights approach advocated by the western countries, emphasis is placed on the rights of the individual. This is a basic deviation from the concept of human rights as seen from the Asian perspective, where family rights and community relations figure prominently. This approach has contributed to the Asian societies becoming more homogeneous than in the west. Perhaps this explains the emphasis on group rights than on individual freedoms. The over-exposure of individual rights, it is argued, has resulted in the deterioration of human relationships. The often cited example is that in the liberated societies of Western Europe and North America the divorce rate is comparatively higher than in the Asian Region. It has been pointed out that religious norms, social constraints and family traditions, which are more strictly adhered to in the Asian Region, has contributed to the preservation of the institution of marriage and the family unit in general. In Buddhism, monogamy is advocated as the ideal and adulterous relations are condemned. The male is exhorted to be satisfied with one wife.⁸ The right to divorce is not expressly mentioned in the Buddhist historical texts. "In fact dissolution is a concept alien to the early Hindu and Buddhist ethos."⁹ However, it is important to stress that Buddhism recognises that men and women are endowed with equal rights, and that

³ *Ibid*, at 439.

⁴ *Ibid*, at 455.

⁵ *Ibid*. Also see J Schacht, *An introduction to Islamic Law* (1964), at 168; AAA Fyzee, *Outlines of Muhammadan Law* (1974), at 215; Mulla, *Principles of Muhamedan Law* (1972), at 348.

⁶ (1955) 56 New Law Reports (Sri Lanka), at 423.

⁷ *Ibid*, at 424. Also see Spiro, *Law of Parent and Child* (1950), at 247.

⁸ See *Buddhism and Human Rights*, *supra*, note 1, at 69. "The male is told to be satisfied with one wife (*ekaya bhariyaya ca hoki tuttho*) and advised against going to another's wife (*parassa daram natikkameyya*) (*Suttanipata*. V 396)."

⁹ *Ibid*, at 70.

marriage should be entered into on the basis of free and full consent of the intending spouses, and for their mutual benefit, which is similar to the provision in Article 16 of the UDHR.

Another feature of the Asian societies is that the children live with their parents, and are supported by the parents, in most instances, till they get married and set up their own home. This helps to keep the family unit together for a longer time. Even after they leave the ancestral home, bonds of family unity are stronger and they always look upon their parents and brothers and sisters for mutual support and assistance. Thus the parents have a greater role to play in the affairs of the children than in Western societies.

These are some of the cultural and social traditions which the Western-oriented human rights norms have failed to take into account, where individual interests are projected more than family ties. The stress placed upon the family perspective of human rights is a significant difference from the western approach. The strong religious background which influences the lives of the people in the Asian region has also not been sufficiently emphasised in the human rights standards set down by the western world.

C. Historical Background

Perhaps the bias towards individual freedoms and personal rights in the western concept of human rights may be traced to the historical context in which these rights were conceived. The Renaissance and the resistance against the overpowering influence of the medieval Church in Europe from about the 16th century gave birth to the idea of individual conscience and individual rights. Hence, defending individual rights and personal freedoms against the encroachment of religion and community was of primary concern to the European freedom fighters.¹⁰

On the other hand, the situation faced by Asian countries was different. It was not a case of freeing the individual from dominance of the Church and State, but of liberating whole communities from colonial rule. Therefore emphasis was placed on collective freedom of the people rather than on individual rights. This trend continued even after independence in order to liberate Asian societies from the dominance of western civilisation.¹¹ Thus we see that the difference in historical background in which these rights were conceived and pursued in European countries accounts for the difference in their approach to human rights from that of Asian countries.

D. Human Development Report

¹⁰ Chandra Muzaffar, "Setting Western Standards for Human Rights" – in *Third World Network Features*, reproduced in Law and Society Trust Fortnightly Review (Colombo), March (1992), at 3.

¹¹ *Ibid.*

The United Nations Development Programme (UNDP), introduced a concept for gauging human development in 1990. A close look at the Human Development Report for 1991 reveals some interesting instances of bias towards the western perspective of human rights. The said report made by Charles Humana uses what are called the “40 indicators to measure freedom”.¹² It is to be noted that these indicators do not reflect the proper human rights situation in the developing countries, as the said indicators

¹² *Ibid*, at 10. The 40 indicators used by Charles Humana in the *World Human Rights Guide*, are:

“The right to

- *travel in own country
- *travel abroad
- *peacefully associate and assemble
- *teach ideas and receive information
- *monitor human rights violations
- *ethnic language

The freedom from

- *forced or child labour
- *compulsory work permits
- *extra-judicial killings or “disappearances”
- *torture or coercion
- *capital punishment
- *corporal punishment
- *unlawful detention
- *compulsory party or organization membership
- *compulsory religion or state ideology in schools
- *arts control
- *political censorship of press
- *censorship of mail or telephone tapping

The freedom for

- *peaceful political opposition
- *multiparty elections by secret and universal ballot
- *political and legal equality for women
- *social and economic equality for women
- *social and economic equality for ethnic minorities
- *independent newspapers
- *independent book publishing
- *independent radio and television networks
- *independent courts
- *independent trade unions

The legal right to

- *a nationality
- *being considered innocent until proved guilty
- *free legal aid when necessary and counsel of own choice
- *open trial
- *prompt trial
- *freedom from police searches of home without a warrant
- *freedom from arbitrary seizure of personal property

are not appropriate for measuring human freedoms in those countries. For example, one such indicator is the personal right to homosexuality between consenting adults.¹³ As such a right is not in accord with the norms of the major religions and cultural traditions in the Asian region, it would hardly be a fair indicator of human freedoms in the Asian context. Another example, in the same category, is the right to determine the number of one's children.¹⁴ In overpopulated countries like China and India, economic and social demands make it imperative for such a right to be curtailed, both in the interest of the country, in general, and in the interest of the family unit, in particular, as the resources available in those countries are hardly sufficient for the present population.

Muzaffar, who had made an analytical study of the said report, raises the following query:

How can a human freedom index ignore freedoms - such as the freedom from hunger - which are fundamental to the very survival of the human being? Shouldn't such freedoms be given much more weight than, say, right to travel abroad, which is one of the 40 indicators used in the report?¹⁵

It is ironical that although this was a report prepared by an UN Agency, it has nevertheless such a Western bias. It is pertinent to note that Sweden heads the list in the category "High Freedom Ranking" in the said report, having satisfied 38 of the 40 indicators.¹⁶ Importantly, however, the only Asian country in that group is Japan, with 32 indicators.

We have dealt with the said report in some detail because it raises the important issue of whether this is a fair assessment of the human rights situation in Asia. The answer is obviously in the negative, because it has failed to take into consideration some of the political, religious, ethnic, social and cultural norms and traditions in this region, when making the said assessment. A further aspect of the above analysis is the prominent divide between Western and Asian Human Rights values.

E. Regional Particularities

The personal right to

- *interracial, interreligious or civil marriage
- *equality of sexes during marriage and for divorce proceedings
- *homosexuality between consenting adults
- *practice any religion
- *determine the number of one's children."

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*, at 1. Muzaffar questions whether China would rank 84 out of 88 countries included in the list if freedom from hunger was taken into consideration.

¹⁶ *Ibid.*, at 10. US ranks 13th with 33 indicators to her credit.

In this context, it is of interest to note that the participants in the Asian Region Preparatory Meeting held in Bangkok in April 1993, whilst recognising the universality of the human rights, stressed the importance of national and regional particularities and cultural, religious and historical backgrounds. Asian leaders make this claim for the distinction on the basis that cultural and political differences entitle Asia to take up a distinctive position on human rights.¹⁷ “The region’s think-tanks have already coined a phrase to describe this approach as ‘situational uniqueness’.”¹⁸ Ultimately, what is sought to be achieved is diversity but not a derogation from universality. This position is reflected in the Final Document¹⁹ of the World Conference on Human Rights, 24 June 1993, where in paragraph 3 it is stated as follows:

All human rights are universal, indivisible and inter-dependant and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. *While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind*, (my emphasis) it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

To have come to some consensus on this issue is a singular achievement of the Conference, considering the sharp divisions and conflicts that exist between Western European countries and East Asian governments.

Conversely, the United States position was that they must “guard against efforts to ‘particularise’ human rights”.²⁰ They feared that if such “particularisation” was permitted it would,

- dilute universal recognition of human rights standards by emphasising a ‘variety of contexts’ to justify exceptions;
- deflect international scrutiny from poor human-rights records by claiming that such scrutiny constitutes a violation of national sovereignty;
- subordinate civil and political rights to economic, social, cultural

¹⁷ Far Eastern Economic Review, 17 June, 1993 at 20.

¹⁸ *Ibid.*

¹⁹ Report of the Drafting Committee A/Conf 157/DC/1/Add 1. 24 June 1993.

²⁰ Far Eastern Economic Review, *supra*, note 17.

and 'development' rights;

- make human-rights improvements dependant on availability of economic aid.²¹

In spite of this controversy, it augurs well for the promotion and protection of human rights in the Asian region that diversity was recognised in the Final Document.

Another important aspect of the Asian perspective of human rights has been aptly stated in the fourth operative paragraph of the Bangkok Declaration, *viz*, "4. Discourage any attempt to use human rights as a conditionality for extending development assistance;"²²

The Asian Governments which support this contention have pointed out that human rights should be developed from within and should not be imposed from outside.²³ An unfortunate result of enforcing conditionalities is that it is the poor people in the recipient countries who directly suffer from such withdrawal or withholding of aid and not the real violators of Human Rights, *viz*, the rulers, in those countries.

Asian countries also contend that human rights are being used as a means by which western countries seek to achieve political objectives. In paragraph 5 of the Bangkok Declaration, it is set out thus,

Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure;²⁴

Some actions of the western governments in the recent past can be cited to show the use of human rights as a political weapon. For example, the US tried to attach human rights conditions for the first time to China's most-favoured-nation (MFN) trade status, but has now abandoned that policy. Previously, such a status was granted unconditionally. However, the withdrawal of aid from The Netherlands to Indonesia for shooting civilian mourners in an East Timorese cemetery in November 1991 resulted in a different reaction. When two of the western donor countries, *viz*, The Netherlands and Canada, suspended aid to Indonesia, Jakarta responded by severing links with the Consortium of Western Donors of Aid to Indonesia. Thereafter, a new grouping was organised excluding The Netherlands. This is an instance of the successful rejection by an Asian country of the western

²¹ *Ibid.*

²² Law and Society Trust – Fortnightly Review, *supra*, note 10, at 2.

²³ Far Eastern Economic Review, *supra*, note 17, at 22.

²⁴ Law and Society Trust – Fortnightly Review, *supra*, note 10, at 2.

concept of tying aid to human rights issues.²⁵

F. *United Nations High Commissioner for Human Rights*

The General Assembly of the United Nations voted on 20 December 1993 in a sequel to the recommendation made by the World Conference on Human Rights, to formally create the office of UN High Commissioner for Human Rights. This office would operate directly under the charge of the UN Secretary-General and would co-ordinate all the activities of the UN relating to promotion and protection of human rights. This being a very powerful and influential post in the international human rights arena, it is important that the world body should give due consideration to the interests of the developing countries, in general, and the Asian countries, in particular, in the appointment of the holder of that post, as a clear understanding of the interests of those countries is necessary to elevate the standards of human rights observance in the world today.

G. *Conclusions*

Thus, upon an analysis of the human rights perspectives of the Asian region, it is apparent that,

- (1) the human rights values have long been nurtured and cherished by the Asian societies which came into existence more than 2500 years ago, certainly long before much of the elite western societies came into being. Thus, there is a strong human rights tradition;
- (2) there is clear support from the teachings of the major religions practised in the region which, in some instances as pointed out above, have even gone beyond the norms and standards set down in present day human rights instruments. Hence, there is a strong religious backing for human rights;
- (3) Asian countries resist the attempt by the western countries to tie the implementation of human rights to development aid and the use of human rights as an instrument of political pressure;
- (4) due regard should be paid to national and regional particularities and various historical, cultural and religious backgrounds;
- (5) the Asian countries resent the attempts by Western powers to

²⁵ Far Eastern Economic Review, *supra*, note 17, at 20.

impose their norms and traditions on these countries in the guise of human rights.

The central theme that emerges from the above analysis is that human rights are universal, and are nothing new or alien to the Asian tradition but they are very much a part of it. Thus, the promotion and protection of human rights is a live tradition in the Asian region, which only has to be revitalised to thereby remove the myth that human rights are a Western concept.

ASOKA DE Z GUNAWARDANA*

* LLB (Ceylon); PhD (Sydney); Advocate (Attorney-at-Law), of the Supreme Court of Sri Lanka; Barrister-at-Law of the High Court of Australia and Supreme Court of New South Wales; Diploma in Human Rights, Raoul Wallenberg Institute, University of Lund, Sweden; Member of the Panel of Arbitrators of the International Centre for Settlement of Investment Disputes, Washington, DC, USA; Formerly Deputy Solicitor-General of Sri Lanka; Judge of the Court of Appeal of Sri Lanka.