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# Towards a Regional Protection of Human Rights in the Perspective of Asia

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## Abstract

This study outlined the regional protection of Human Rights in Asia that spans from the Middle East to Japan and covers up a very large space of Indian Sub-Continent, is geographically, politically and culturally too diverse for human rights to be managed effectively by a single protection. For a sustainable and effective protection, recognition of diverse political and social structures that range from democracy of Bangladesh, India, Japan, 'semi-authoritarianism' of Singapore and Malaysia, communism of China and Vietnam and Islamic reigns of Iran, Saudi Arabia and so on. And, importantly distinct cultural traditions, social practices and environments result particular needs for each Asian country. So, a 'margin of appreciation' should, as far as possible, be respected. If Human Rights mechanisms are to be successfully established in Asia, sub-regions are to be clearly defined within the larger Asian environment. Such sub-regional human rights systems can be more efficient for that the field of enforcing human rights then shall become narrower and easier to keep watchful eyes on discrimination and effective communication and fruitful establishment of human rights.

**Keywords:** Regional Protection, Asian Values, ASEAN, Human Rights, Diversity, Culture, Religion, Tradition.

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## **1. Introduction**

Human rights lack in enforceability if it is fostering democracy is controversial or creates pseudo-enforceability by coining mere terms and plans without any political stability or willingness. So, the core thing of effective application of human rights touches the question of how power is distributed in a society and of state-individual relations, obligations, transparency and limitation to authoritarian state practice.

A few observations help to establish a context for talking about human rights in Asia. First, it could be argued that in Asia there is no history of 'human rights' as understood in its western context. As per the observation of Kenneth Christie and Denny Roy:

“Human rights in their original sense (to which Asians have been obliged to react) not only apply to all groups of people in all societies, regardless of their socioeconomic status, but are also conceived of as fundamental entitlements that ‘trump’ all other considerations which may stem from an individual’s relationship to social networks or to the state. In Asia and other Third World societies there is no tradition of such entitlements. People are believed to have basic duties, not basic rights, and these duties arise from a person’s status or group affiliation. Thus, a ruler may have a duty to rule justly and the rich a duty to give to the poor, but this does not mean that the people have a right to be ruled justly or that the poor have a right to receive charity.” (Christie & Roy, 2001)

The term “Asian values” is such a creation of some Asian leaders. The 1990s saw the rise of what came to be known as “Asian values” in the global human rights debate. In short, proponents of the “Asian values” case held that human rights, in particular civil and political rights, were culturally specific and could not be applied universally. Instead, they argued for culturally and developmentally specific interpretations of rights, in this case based on “Asian values.” (Avonius & Kingsbury, 2008)

However, some scholars criticized the term ‘Asian values’. The Question of distinctive value of the Asian people is viewed as:

“Are there such things as Asian values, understood as a common social morality embraced by that half of humanity living in Asia today? Hardly, we contend, apart from the common humane values that are also shared by the other half of humanity. This anthology intends to show that there is no distinctively ‘Asian’ perspective, entirely different from Western or other perspectives and unanimously shared by all Asian societies.

Accordingly, we are not concerned with identifying a specific Asianness in the approach to human rights, but with investigating the background for what

has now established itself as the Asian values argument in international politics as well as with tracing similarities and dissimilarities in the current controversies over human rights and national cultures in Asian societies.” (Jacobsen & Bruun, 2004)

But, we cannot in any way, deny to the fact that Asian values discourse has its distinctive nature. So, we would like to introduce this discourse in our study and observe its technical opportunities and problems.

## **2. Asian Values and Human Rights in Asia**

### **2.1. The Concept of Human Rights**

The concept of a 'human rights culture' means different things to different people. To some, it means ensuring that everyone is treated with respect for their inherent dignity and human worth. To others, it means that judges, the police, and immigration officials are required to protect the interests of terrorists, criminals, and other undesirable elements at the expense of the security of the population. (Clapham, 2007)

Whatever the conception the word human rights mean, the common thing to be noticed is these are a bunch of rights that are interrelated with different human beings indifferent of their caste, race, religion, sex or any other barriers.

We first need to understand that human rights are considered a special, narrow category of rights. William Edmundson distinguishes human rights from other rights by suggesting that:

'Human rights recognize extraordinarily special, basic interests, and this sets them apart from rights, even moral rights, generally.'(Edmundson, 2012)

Richard Falk suggests that human rights are a 'new type of rights' achieving prominence as a result of the adoption of the Universal Declaration of Human Rights by the United Nations in 1948. (Clapham, 2007)

### **2.2. The Conflict between Asian Values and Western Ideas of Human Rights**

The term “Asian values” was coined and advocated by some of the influential leaders of Asian countries such as Lee Kuan Yew, Suharto and Mahathir Mohammad. They had strong possession on this point and

rejected the “western ideas” saying that they have “Asian Values” which are totally integral in nature.

But, Lenk’s observation says that their voices echoed the main trend of Western human rights studies, when some of them maintained “Human rights . . . raised from the tradition of the occident humanist and humanistic arts of thinking” (Lenk, 2008)

Some scholars of the supporter of the Western theory of human rights argue that:

“The term ‘human rights’ was originally a western concept originating from the experience and political philosophy of Western Europe. One of the dominant themes of Western European history has been the struggle of citizens to limit the powers and intrusiveness of their rulers. Many western political thinkers have characterized government as a necessary evil, ideally given the task only of providing the protection and minimal supervision that allow the people to achieve prosperity and self-fulfillment. When the phrase ‘human rights’ came into popular usage after the Second World War, it referred to laws protecting citizens from being abused or suppressed by their governments – what are now more specifically called civil and political human rights. The need to distinguish this class of human rights, also known as ‘first generation human rights’, arose from the assertion of Third World commentators that social and economic rights (‘second generation human rights’), which are guarantees that basic needs (food, shelter, employment, medical care, etc.) will be met, are desired by the majority of the world’s population at least as deeply as civil liberties.” (Christie & Roy, 2001)

But, why the term ‘Asian values’ was so much highlighted? Professor Mauzy points out the causes of the Asian values discourse:

First, the reassertion of 'Asian values' is in response to the determined promotion by the West, especially the US, of its own values following the demise of the Soviet Union, which left a 'crusading void.' (Vincent 1986: 2). The ASEAN states resent the West's belittling of 'Asian values', and they assert that they are resisting what they perceive to be Western bullying.<sup>3</sup>

Second, there has been a growing confidence in many Southeast Asian countries, buoyed by substantial economic successes (CarnegieCouncil.org, 2017) that appear to justify the policy of putting economic development first and giving priority to order and stability (the 'strong state') and what they call 'good government'.<sup>4</sup>

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3 Jakarta Post, 22 June 1993.

4 Far Eastern Economic Review 12 October 1995: 45-124.

They believe that their own values and traditions have served them well, and, as expressed by the Malaysian deputy prime minister, Anwar Ibrahim, that they are experiencing an 'Asian Renaissance' in terms of a cultural rebirth and Asian empowerment.<sup>5</sup>

Furthermore, the democratic and human rights campaign from the West has revived and released a deeply felt bitterness about colonialization and colonialist assumptions on human rights that is not fully appreciated in the West.

A quote from Anwar Ibrahim captures the mood:

“... to allow ourselves to be lectured and hectorred on freedom and human rights after 100 years of struggle to regain our liberty and human dignity, by those who participated in our subjugation, is to willingly suffer impudence.”<sup>6</sup>

Third, there is also a widespread suspicion that the West has a hidden agenda to maintain hegemony by slowing down Asian prosperity and crippling its competitiveness by 'changing the rules' to invoke a new kind of protectionism with human rights and democracy as the standard bearers, succeeding the old banners of colonialism and Christianity.

Likewise, the Western media are sometimes portrayed as accomplices in serving dominant Western power interests. (Laiq, 1996). The suspicion that the West's real goal is domination is shared by some Asian NGOs and was the central theme of a biting critical NGO-sponsored international conference on 'Rethinking Human Rights' held in December 1994 in Kuala Lumpur, Malaysia.

Finally, there is a feeling that the Western model being promoted, meaning predominantly the US model, is flawed and therefore undesirable for Asia. This feeling is accompanied by widespread dismay at the social decay in the West.<sup>7</sup> Asians naturally want to avoid the problems of rampant crime, welfare-induced sloth, and a breakdown of society.<sup>8</sup>

The human rights and 'Asian values' debate in Southeast Asia 213 prominence of rights and freedoms in the West since the Second World War is at least partly responsible for the current social decay.<sup>9</sup>

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5 Far Eastern Economic Review 7 December 1995: 23.

6 Far Eastern Economic Review 2 June 1994: 20.

7 Time Magazine 14 June 1993: 16-19; Mahbubani 1992: 3-12.

8 Economist 28 May 1994: 9-10.

9 Far Eastern Economic Review 17 June 1993: 5.

### **2.3. A Critical Observation on Asian Values**

So many scholars have oversimplified and sometimes made even pointless commentaries on 'Asian values.' They often underestimated the diversity of its cultures, religions, traditions and histories. Some dismiss the notion saying that it was manufactured as a convenient defense for authoritarian government. (Little, 1996).

There are other scholars of Western liberal and social democratic values as conservatism. (Rodan and Hewison, 1996)

But, it is a matter of fact that there is no pan-Asian view or set of values that can be uniformly termed as 'Asian values'. Clearly, not all Asians share all the Asian values. However, it seems the term is applied to Southeast Asia where there is a shared portion of values and commonalities exist. (Stubbs, 1995).

However, the ASEAN states emphasize a balance between rights and duties, although in reality the balance remains tilted towards duties in most of these states (Anwar Ibrahim, 1994).

Yet another widely shared Asian value, not just in Confucian East Asia and Singapore, but also in Islamic Indonesia and Malaysia, and Buddhist Thailand (and once valued to a degree in the West), emphasizes communitarianism - the concept that responsibilities to the family and the community have priority over the rights of the individual (Muzaffar, 1995: 5; Fukuyama, 1995).

'None of the major Asian philosophies,' writes Muzaffar, 'regards the individual as the ultimate measure of all things' (Muzaffar, 1996).

### **2.4. Hindrances of Considering Asia as a Unit**

Considering Asia as a unit is not an easy exercise for various reasons. The size of Asia is itself a problem. Then comes the population. Asia is a country where 60 percent of the total world population lives. So, what we can consider to be values of our society or geographical area, is not the value of the other parts of Asia. There are quintessential values that differentiate Asians as a group from people in the rest of the world.

The advocates of "Asian values" have tended to look primarily at East Asia as the region of particular applicability. However, in fact, East Asia itself has much diversity. There are far variation between Japan and China and Korea. Various cultures influences from within and outside this region

have affected human lives over the history of this rather large territory. (Sen, 1997)

### **3. Towards Freedom, Democracy, Tolerance and Basic Human Rights**

#### **3.1. A Brief Statement of Human Rights in Asia**

**India:** If we pay our attention to the world's biggest democratic republic, that is, India, we can see that the basic human rights are humiliated in so many ways. A few case studies can help to get a better understanding of the situation.

- i. Custodial Death of Md Jaleel, Andhra Pradesh:** On 26 August 2004, the NHRC received information from the Collector & District Magistrate, Warangal in Andhra Pradesh about the custodial death of Md. Jaleel (son of Bandeli, resident of Malkapur village, Ghanpur, Warangal district) in police custody. The post mortem report found that he died due to acute Pancreatitis, a natural death. The Magisterial Enquiry did not find foul play or medical negligence.

According to the police, 25-year-old Jaleel was taken into police custody on 25 August 2004 in connection with case No. 271/2004. He died on 26 August 2004 in MGM Hospital, Warangal. During the enquiry the family of the victim claimed that Jaleel was, in fact, arrested by the police on the evening of 24 August 2004. The police provided records showing his arrest on 25 August 2004 at 0245 hours.

On 9 December 2006, the NHRC asked the Director General of Police (DGP), Andhra Pradesh to initiate a Criminal Investigation Department (CID) inquiry and take appropriate action on the outcome of such enquiry. The Commission further directed the DGP, Andhra Pradesh to send the report of the CID enquiry along with Action Taken Report within six weeks.<sup>10</sup>

- ii. Custodial death of Parmeshwar Dayal, Delhi:** On 15 March 2005, 28-year-old businessman Parmeshwar Dayal died in police custody in the Shanti Nagar area of North-west district of Delhi. He had been rescued by the Delhi police from Pune, Maharashtra after being allegedly abducted from Delhi. The police brought him back to Delhi on the night of 14 March 2005 but did not hand him over to the family.

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10 NHRC Case Number: 424/1/2004-2005-CD.

The victim's family alleged that he was tortured in custody by the police in connivance with a business rival. The police claimed he committed suicide by touching live wires after breaking a bulb holder inside the toilet.

According to his relative Rajender Kumar, the police did not allow him to meet Parmeshwar after he was brought back from Pune. The family was only told of the victim's death on the morning of 15 March 2005.

The NHRC has directed the Commissioner of Police, Delhi to submit the inquest report, postmortem report along with the status of Magisterial Inquiry and the status of investigation in the FIR registered in relation to the incident.<sup>11</sup>

From 1 April 2001 to 31 March 2009, the deaths of 1,184 persons in police custody were reported to the NHRC. An overwhelming number of these deaths had taken place as a result of torture. Most of these deaths took place within 48 hours of the victims being taken into custody by the police. In recognition of the scale of the problem of use of torture, on 14 December 1993, the National Human Rights Commission (NHRC) issued guidelines directing all District Magistrates and Superintendents of Police in every district to report to the Secretary General of the NHRC about custodial deaths/rapes within 24 hours.

The NHRC warned that: "Failure to report promptly would give rise to presumption that there was an attempt to suppress the incident". A landmark judgment in 1996 in the case of *D. K. Basu v. State of West Bengal*, the Supreme Court laid down specific guidelines required to be followed while making arrests with the aim to eliminate violations of human rights in police custody. (Asian Centre for Human Rights, 2009)

**Bangladesh:** Same kind of direction was given by the Supreme Court of Bangladesh in a landmark case of *BLAST and others v. Bangladesh*.

**Fact of BLAST Case:** The petitioners argued that law enforcing agencies routinely abuse the powers granted under Sections 54 and 167 of the CrPC, and further that these provisions suffer from vagueness and allow for arbitrary exercise of power. The petitioners argued that the Court should enunciate safeguards to prevent or curtail police abuse of powers and arbitrary actions by Magistrates, which constitute violations of citizens' fundamental rights to life and liberty,

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11 NHRC Case Number 5061/30/2004-2005-CD.

to equal protection of law, to be treated in accordance with law and to be free from cruel, inhuman and degrading treatment and punishment as guaranteed under articles 32, 27, 31, 33 and 35 of the Constitution.

The Supreme Court of Bangladesh laid down a set of fifteen guidelines with regard to exercise of powers of arrest and remand. It includes the manner and procedures the police must follow during the exercising the powers.

Let's take a look at the Human Rights Watch's report of 2016 about the overall conditions of Human Rights in Bangladesh:

The Detective Branch of the police, the Bangladesh Border Guards (BGB), and the Rapid Action Battalion (RAB) have been responsible for serious abuses, including arbitrary arrests, torture, enforced disappearances, and killings.

The government increased its attacks on civil society organizations and critics in 2015, and drafted a new law restricting foreign funding to Bangladeshi groups. Ain O Salish Kendra (ASK), another prominent human rights organization, remained under pressure for reporting on enforced disappearances and extrajudicial killings.

In several instances, critical editors and journalists were sued by government supporters. Journalists and civil society activists critical of Bangladesh's war crimes tribunal faced contempt charges and trials. Several bloggers and their publishers were hacked to death by Islamist militants in 2015 for promoting secularism. (Human Rights Watch, 2016)

**China:** The Chinese government tightly restricts freedom of expression through censorship and punishments. While the Internet has offered a marginally freer space, the government censors politically unacceptable information through means such as the "Great Firewall." Despite media censorship, journalists and editors have at times pushed the limits of acceptable expression.

While China is rhetorically committed to gender equality, its lack of respect for human rights means that women continue to face systemic discrimination on issues ranging from employment to sexual harassment. Family planning policies, which control the number and spacing of children people can have, continue to impose severe restrictions on women's reproductive freedoms. In October, authorities announced an end to its decades-old "one-child" policy; couples may now have two children. (Human Rights Watch, 2016)

**Iran:** Security authorities continued to clamp down on free speech and dissent, and revolutionary courts handed down harsh sentences against social media users, including death sentences in some cases. As of December, according to Reporters Without Borders, Iran held at least 50 journalists, bloggers, and social media activists in detention.

Scores of people held for their affiliation with banned opposition parties, labor unions, and student groups were in prison. The judiciary targeted independent and unregistered trade unions, and security and intelligence forces continued to round up labor activists and leaders. (Human Rights Watch, 2016)

## **4. Towards Regional Protection**

### **4.1. Prioritizing the Cultural Diversity**

Upholding the heterogeneity in Asian traditions does not, in any way, settle down the issues of the existence of individual freedom and political liberty within this very culture. One may argue that the traditions extant in Asia differ even among themselves, but, nevertheless they share some common characteristics too. But, the question is, whether the Asian countries share the common feature of being skeptical to freedom and liberty, while emphasizing order and discipline only?

It is equally true that the authoritarian reasoning also often gets backup from the West itself. There is clear tendency of USA and Europe, implicitly and even explicitly assume the political freedom of the people of Asia. The post-colonial hangover is yet to be overthrown.

### **4.2. Theory Applied in Practice**

It is important to recognize that many of the historical leaders in Asia not only emphasized the importance of freedom and tolerance, they had clear theories as to why this was appropriate thing to do. Since, the Islamic tradition is sometimes seen as being monolithic, this is particularly important to emphasize the rules of Muslim Emperors esp. of Akbar. In the way they carried out all the diversity of religions and cultures, is undoubtedly a remarkable example of peace and harmony.

The subject of tolerance, of peace and harmony was indeed much discussed by many writers during the period of confrontation of religious traditions and the associated politics.

### 4.3. Sub-regional Human Rights Protection Mechanism

Whereas Europe, Africa and the Americas established their respective human rights instruments with the corresponding enforcement mechanism, the Asia-Pacific region remains the only UN defined region without a specific human right treaty and without a region-wide mechanism directed at the promotion and protection of human rights. Although the final aim, the setting up of regional human rights machinery, has not been reached so far, progress has been made in the protection and promotion of human rights through the engagement of the UN in creating a regional human rights mechanism, and through the creation of sub-regional human rights protection mechanism as the ASEAN Intergovernmental Commission on Human Rights.

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