

JURNAL AKADEMIK

Vol. 1, No. 1, Disember 1999

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Shad Saleem Faruqi



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Usaha Taqwa Mulia

HUMAN RIGHTS, GLOBALISATION AND THE ASIAN ECONOMIC CRISIS

Shad Saleem Faruqi¹

Abstract

Injustice anywhere is a threat to justice everywhere. Human rights abuses in any part of the globe deserve world-wide condemnation because state sovereignty is a shield against external aggression. It cannot be used as a sword against one's own nationals. Half a century after the adoption of the Universal Declaration of Human Rights, one can say with guarded optimism that freedom is on the march; that the human rights quest has gained a universal appeal. But despite global recognition of the legitimacy of the human rights discourse, there remain disagreement and discord on a number of thorny issues. The essay examines whether the "Asian values" argument is a smokescreen for the perpetuation of authoritarianism or whether it is a genuine attempt to resist the sweep of hegemonic "Western" values. The author warns that the human rights quest is a journey, not a destination and one must remain vigilant against new threats like economic globalisation which has added a new form of oppression to older discriminations.

1.0 INTRODUCTORY REMARKS

The quest for human rights is hundreds of years old and has a long history of blood and sacrifice. What characterises the modern age is that the debate relating to human rights, economic management, development policies and labour relations has acquired an international dimension. There are increasing pressures to conform to global norms of behaviour in these fields.

Understandably there is protest and anger, some of it justified, at across-the-border pressures to conform to standards set by North American and European dominated international institutions. But such global pressures have done a great deal of good for the human rights quest. It is now recognised that state sovereignty is a shield against external aggression. It cannot be used as a sword against one's own nationals. Human rights issues transcend territory. Abuses anywhere deserve world-wide condemnation because injustice anywhere is a threat to justice everywhere.

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Whether human rights are worthy of support is no longer an issue. Most constitutions of the world give due recognition to the need to limit state powers and to secure the basic liberties of citizens.² Human rights provisions in constitutional documents are often supplemented by ordinary legislation, by judge-made principles of common law and by constitutional conventions and usages.

Half a century after the adoption of the Universal Declaration of Human Rights, one can say with guarded optimism that freedom is on the march. The ardour for liberty is spreading. The human rights movement is at a high tide. The quest for the inalienable rights of man has gained a universal appeal.

In most countries of the world a number of non-governmental organisations are actively promoting a human rights agenda. The triumphs of technology are enabling them to network and mobilise on a global scale. International human rights watchdogs like Amnesty International are ever willing to raise their voice of concern whenever liberty is trampled.

In international relations the human rights agenda is often a conditionality for trade and aid. Dictators and tyrants are increasingly learning that news about human rights infringements is difficult to suppress and impossible to brush aside.

Exhilarating though these developments are, one must note that there is a darker side to the human rights movement.

The weapon of conditionality is often abused. Nations like the USA and international institutions under US control raise the human rights ruse and employ sanctions to destroy the economies of weaker members of the international community. In recent times Cuba, Libya, Iran and Iraq have been singled out partly because of their human rights record and partly because they have the courage to defy American hegemony. China and Russia, with all their human rights violations, are spared economic boycotts because US corporations see boundless profits and possibilities in the vast Chinese and Russian hinterlands. A rogue nation like Israel, with all its genocidal and expansionist policies, is spared trade sanctions because of its close ties with Washington. Sanctions are, therefore, not a price to be paid by rogue nations for human rights violations but a device by the United States to punish its foes.

It is clearly the case that the international law on human rights catches flies but lets hornets go free.

² In actual practice, however, there is, in every legal system, a wide gap between promise and performance. Note for example the 1998 Amnesty International Report on "persistent and widespread pattern of human rights violations in the USA", "entrenched and nationwide police brutality", "physical and sexual abuse of prisoners" and widespread "racism and discrimination contribut(ing) to the denial of the fundamental rights of countless men, women and children": Amnesty International, United States of America - Rights For All, London, 1998.

The human rights argument is so much in vogue that a lot of causes, though frivolous in nature and irrelevant to the dignity of man are brought under the umbrella of a human rights claim. There is a sort of "human rights epidemic" that is sweeping many lands. The right to homosexuality, to pornography, to abortion on demand and to same-sex marriages are all being treated as human rights issues. Homosexual couples are seeking to adopt children in the like manner of their heterosexual counterparts. Children are obtaining a right to divorce their parents. A publication from the Law School in Exeter lists the right to outdoor recreation, the rights of the unborn and freedom from unwanted publicity as fundamental liberties³ Clearly there is an overzealousness in some human rights claims and a failure to distinguish ordinary civil claims from fundamental human rights.

Further, there is the problem of enforceability of the growing body of international law on human rights. Most legal systems, especially those built on the philosophical foundations of legal positivism, define the concept of law so narrowly as to exclude all norms other than those enacted formally by the sovereign state. For example, in both Malaysia and the United Kingdom international law is not law per se. It becomes part of the corpus juris only if given the kiss of life by national legislation. This means that human rights guaranteed by international law are unaccompanied by remedies in national courts. For the average citizen, with a grievance against his state, international law is like a light that does not shine and a fire that does not glow.

2.0 PHILOSOPHICAL ASSUMPTIONS

The growing affirmation of "the inalienable rights of man" is premised on the following political and philosophical assumptions:

- (i) Human rights are inherent. They belong to an individual by virtue of his or her humanity. They apply to every member of the human race irrespective of race, religion, colour, caste, creed, gender or nationality.
- (ii) Human rights are supra-legal. They do not depend on the existence of a state or a constitution. They enjoy an authority superior to and independent of government. They belong to human beings not because of the charity or generosity of the state but because they are derived from a source superior to man-made law.

There is no agreement, however, on what this "superior source" is. All religious theories trace human rights to the will of God or to a divine world order. The Greek and Roman Stoics traced them to the 'law of nature'. Spinozza and

³ Bridge, Lasok, Perrott, Plender, *Fundamental Rights*, London, Sweet & Maxwell, 1973.

Wolff attributed them to 'pure reason'. Rousseau and Kant invoked the 'General Will'. Locke derived them from 'social contract'. Finnis treats them as self-evident. Ronald Dworkin bases them on intuitions about justice and fairness and on a dimension of morality.

- (iii) Human rights transcend time and territory. They represent universal standards for evaluating national laws and institutions.
- (iv) Human rights are ancient in origin. The international movement for human rights, while unquestionably momentous for our times, is part of a long process of social and political evolution that has been going on for centuries. As long ago as 1215, the Magna Carta in England guaranteed proceedings "according to the law of the land". Even before this momentous formulation of the rights of man, human dignity and freedom were sanctified in the doctrines of most religions.
- (v) Fundamental rights belong to human beings as individuals as well as to human groups as collective entities.
- (vi) Fundamental rights are essential requirements for the fulfillment of important human needs.
- (vii) Human rights are essential conditions for a free and democratic society. They are principles of liberty and justice without which a fair and enlightened system of government would be impossible.
- (viii) Human rights are more sacred than ordinary legal rights. They have a threshold weight against community goals and cannot be sacrificed because of utilitarian calculations of general public interest. In the words of Ronald Dworkin, human rights are "trumps" that override economic and social goals.⁴
- (ix) Human rights represent legal and moral limits on the power of government. As Justice Jackson said in *West Virginia State Board of Education v Barnette* (1943) 319 U.S. 624 at 638:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.... Fundamental Rights may not be submitted to vote; they depend on the outcome of no elections.

⁴ Ronald Dworkin, Taking Rights Seriously. Ronald Dworkin, "A Trump Over Utility", (1981) 1 Oxford Journal of Legal Studies, vol. 1.

Despite broad agreement on most of the above foundational assumptions, the actual substantive content of human rights remains a contentious matter. The recognition of many core rights in a hundred or so international covenants and in approximately one hundred eighty national constitutions, has not wiped away discord on a number of thorny issues outlined below.

2.1 North-South/East-West Perspectives

Are human rights universal? Is there a high, common ground of shared ideals in the universal quest for justice and equality? Or is it the case that on issues of human rights, "East is East and West is West and never the twain shall meet"?

The debate is inconclusive because terms like 'East', 'West', 'North', 'South' do not mean the same thing to everyone.⁵ There is also the fact that neither the East nor the West are homogeneous areas and within each sphere there is no dearth of value pluralism. This essay will highlight ten areas of human rights concern in which there are clear differences of world-view between the orient and the occident.

2.1.1 Socio-Economic Rights Versus Civil And Political Liberties

Is food as important as freedom and bread as important as the ballot box? Can there be any meaningful enjoyment of human rights if poverty is pervasive and hunger and disease stalk the population?

In the context of Asia and Africa it is legitimate to ask whether socio-economic rights like the 'right to basic necessities' and the 'right to development' are entitled to the same protection as civil and political liberties?

Before these questions are answered it is necessary to note the traditional distinction between socio-economic rights and civil and political liberties.

Socio-economics rights substantive and affirmative action on the part of the state and are referred to as 'positive rights'. They make explicit claims upon government. They entail massive allocation of public resources. They require legislative and administrative decisions meant to protect the weak from deprivation and to aid the deprived.

⁵ The states of the South are described by many terms - the Third World, the Developing World and the Less Developed Countries. There is even mention of the Fourth and the Fifth World to refer to desperately poor regions. See Daniel S. Papp, *Contemporary International Relations*, Fourth edition, pp. 183-4.

Civil and political liberties, on the other hand, are referred to as 'negative liberties' because they thrive on non-interference from the state. Justice Hugo Black called them a list of "Thou Shall Nots".⁶

It is submitted that such a distinction ought not to be made. Human rights are "indivisible, interdependent and interrelated".⁷ The traditional, "first generation" political and civil liberties cannot be separated from socio-economic protections because political and legal principles alone cannot ensure a regime of human rights. Socio-economic justice is also important. The satisfaction of basic needs is an essential aspect of human dignity. "Positive rights" like the right to education are central to the human rights quest because they help to create the socio-economic conditions which are conducive to the enjoyment of civil liberties.

For a very long time international law has recognised this connection between human rights and poverty alleviation. Article 11 of the International Covenant on Economic, Social and Cultural Rights (1976) declares that "the State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuing improvement of living conditions". Article 14 of the Vienna Declaration explicitly acknowledges that "the existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority of the international community". The United Nations Declaration on Eradication of Hunger likewise recognises that eradication of rural poverty and agrarian reforms are pre-requisites for the realisation of the goals of the Universal Declaration of Human Rights. Reference may also be made to Article 22 of the African [Banjul] Charter on Human and People's Rights (1986).

Unfortunately the Western-dominated human rights dialogue tends to concentrate on civil and political liberties and sees these liberties as the foundation on which socio-economic justice can be built. In a throwback to the language of the Cold War, some Western commentators claim that economic, social and cultural rights are not really rights at all, but mere goals towards which we should aspire. They also argue that 'positive rights' are a smokescreen for violations of civil and political rights.

At the other extreme is the argument of some "developmentalists" that political freedoms must wait till a certain level of economic development is attained.

⁶ Dick A E Howard, "Liberty's Text: 10 Amendments That Changed The World", *Washington Post*, Dec. 15, 1991, pp. 24-25.

⁷ Article 5 of the Vienna Declaration and Programme of Action, UN DOC A/CONF. 157/23, 12 July 1993.

Many Asian leaders echo this sentiment that economic welfare must have priority over civil and political rights.

It is submitted that such sequencing or prioritisation is self-defeating. Life is a process of balancing of conflicting interests. Food and freedom must go together. Order, harmony, stability and economic prosperity must be balanced with the need for liberty. Just as freedom must have its limits, power too must be subject to restraints. Democracy and economic prosperity are both possible because democracy offers a potent framework for development. The enfranchising of all sectors of society empowers the weak and the marginalised to exert pressures for change and to demand some say in developmental policies.

Sadly, however, many political systems plead lack of resources to escape their obligations to enforce economic, social and cultural rights.

For instance, the Indian legal system incorporates positive rights into a chapter on Directive Principles of State Policy but makes the chapter's provisions non-enforceable in a court of law.

What needs to be done is to restore the symmetry of human rights discourse. We need to recognise that human rights are not divisible. Bread and ballot must go hand in hand. Freedom without food is pointless. Equally, man cannot live by bread alone.

2.1.2 Absolutism versus Relativism: The "Asian Values" Debate

Is there one universal concept of human rights or are there many conceptions? Are ideas of human dignity common to all mankind or are they relative to time and place? There are many points of view.

The universalist perspective is supported by most Western nations and by the Western-educated elite of Asia. It holds that human rights values are universal and transcend time and territory. The impulses of human rights are recognised in a large number of international treaties to which a large part of the civilised world has given its assent. The 'Asian values' argument is a fraud. It is a crude attempt to avoid compliance with international standards on human rights. It is a camouflage for continuation of authoritarian policies. Some proponents of the universalist position even go to the extent of asserting that Asian values, if they exist at all, are inferior to Western values and must be shoved aside to permit the onward march of the superior, beneficent Caucasian and Christian civilisation.

In contrast, the proponents of Asian values argue for relativism. They draw on the *volksgeist* theory of historicism to submit that historical, cultural, religious, economic and environmental differences are so great and so compelling that they

necessitate recognition of value pluralism. The “relativists” point to the teaching of sociology that context must determine content. They react indignantly to the contention that the Asian values argument is a camouflage for continuation of authoritarian policies and retort that the claim that ‘human rights values are universal’ is a thinly disguised neo-colonial argument for perpetuation of cultural and economic hegemony by a civilisation that is used to domination.

It is submitted that the truth lies somewhere in between. Our thinking on human rights cannot be insulated from our religious, cultural, economic and historical insights. The argument that there are no Asian values or that Asian values are inferior to Western values is a racist and ethnocentric argument. At the same time it must be conceded that Asian values, as interpreted by some authoritarian Asian leaders, have undoubtedly been used to douse the flame of freedom. Equally, American pontifications about human rights are used to promote a narrow Westcentric view of human civilisation and to secure unfair advantages for Europe and America in the post cold war era.

A middle path between these two extremes can be blazed. It does not take much to recognise that cultural differences are an undeniable anthropological fact. At the same time the tragic lessons of this century require us to accept the imperative of some universal human rights. The conflict between pluralism and monism in fundamental rights doctrine can be solved by deft drafting which could accommodate both the need for core, universal standards and the conflicting need for a variable content to accommodate local needs, demands and expectations. A human rights law with a settled core and a variable penumbra is a distinct possibility.

This middle approach searches for unity within diversity and points to a core of settled human rights values. But it acknowledges that the core is surrounded by a fringe or penumbra in which culture and context determine the content of fundamental freedoms. Thus, while it is recognised that there should be freedom of conscience, there is no universal agreement about whether this right includes the right of “cults” and “deviationist groups” to profess, practise and preach their unorthodox brand of “religion”. Ex-communication and ostracization of “deviationists” is seen by most religious traditions as a necessary method to protect the “purity” and integrity of their doctrines. Similarly with the right to establish a family. Cultural and religious considerations prevent any universal agreement on such explosive issues as same-sex marriages and the right of homosexual and lesbian couples to adopt children in the like manner of their heterosexual counterparts. There is also no agreement on whether freedom of speech includes the right to pornography and the right to burn one’s national flag; whether the right to speech, assembly and association includes the right of workers to go on industrial strikes as and when they please and whether the right to life includes the “right to terminate one’s life” through euthanasia?

Many constitutional courts have had to battle with the emerging jurisprudence that holds that the term 'life' encompasses 'the dignity of life' so that the celebrated constitutional guarantee includes the necessities of life like employment, minimum wages and clean environment.⁸ Likewise it has been argued that the fundamental right to 'liberty' includes the right to abortion as in the American case of *Roe v Wade*.

Our core rights are surrounded by these penumbral issues. In the penumbra, cultural relativism prevents any universal paradigms. In working out answers to these issues in the penumbra it would be arbitrary and hegemonic to exclude the culture, religion and history of the society under study. The "hermeneutic approach" in legal philosophy would reject a purely objective and neutral interpretation of fundamental notions of liberty and would require us to take account of the way the participants understand the practices they participate in. This approach calls upon us to understand a social system by understanding how the people who created the system or who participate in it perceive the system or their situation in it.

Nevertheless, in the times in which we are living and with the benefit of tragic lessons thrown up by recent history during and after World War II, it is desirable to have a well defined nucleus or core of human rights that deserves universal protection if human beings are to be spared gross infringements upon their personal integrity. Included in this nucleus should be the right to life, liberty, property and due process; freedom of conscience; protection against torture and against retrospective criminal laws and double jeopardy. There should be unwavering universal application of rights and no relativism in relation to the existence of these core rights. Unfortunately the fringe manifestations of these core entitlements will always pose thorny problems in constitutional law.

2.1.3 The Instrumentality Of Democracy

There is no universal agreement on the instrumentalities through which human freedoms can be achieved.

Many Asian and African scholars wonder whether 'liberal democracy' can provide iron-clad guarantees for safeguarding the whole range of socio-economic and political rights. But to most American and European observers electoral democracy is the surest catalyst for the evolution of a regime of human rights.

⁸ Judicial decisions from India and the USA tend to interpret the constitutional rights to 'life' and 'personal liberty' so broadly as to encompass attributes not explicitly mentioned in the Constitution. Thus the right to life includes the right to work, protection against brutal treatment in prisons, the right to human dignity in all its forms including the right to enjoy a clean environment. Liberty includes the right to an expeditious trial, the right to movement and even the right to abortion on demand.

It is submitted that while this is largely true, the connection between electoral democracy and human rights is not always evident. Majoritarian democracy is not always conducive to the protection of minority rights. For example, some years ago the Congress-led government of India, conscious of the power of the Hindu electorate, turned a blind eye as Hindu militants destroyed a Muslim mosque in Ayodhya. In many other instances, “free and fair” elections returned racists and fascists to power to enable them to subvert peace and reconciliation. Bosnia’s Serb leader Radovan Karadzic, Israel’s Netanyahu and India’s BJP leader Vajpayee have wide popular support as well as the blood of thousands of innocents on their hands. Regimes in Slovakia and Sri Lanka prove to us that elections are not an end themselves. Elections may actually increase ethnic and religious tensions. They may give rise to Frankenstein-type of regimes that, once elected, do everything in their power to subvert the foundations of the democratic state which gave them birth.

Electoral democracy’s ability to bring fundamental, structural changes is also open to doubt. Democracy is good for incremental movements. But its ability to bring about unpopular adjustments to the basic framework is open to doubt. Agrarian land reform, for example, poses difficult problems for any political party which relies on donations from the landed gentry. Monetary contributions from the business community and multi-national corporations to the coiffeurs of political parties do much to dilute consumer and environmental protection policies. A Malaysian commentator once remarked that “national elections are a means for the politicians to extract money from the rich and votes from the poor on the pretext of protecting one against the other”! The experience of India and the Philippines shows us that the connection between democracy and socio-economic development is by no means a necessary one. The critical legal studies movement in the USA argues that the American constitution is a charter for the rich and the privileged. American democracy is largely indifferent to the plight of the poor and the marginalised.

Nevertheless, a trade-off between democracy and development is not justified. Civil and political liberties are not incompatible with the need for rapid economic development. The “developmentalists” are wrong in asserting that subsistence rights must have priority over civil liberties; that stability must be preferred over a participatory political system and that a certain level of development must be achieved before democracy is to be allowed.

The prioritisation or sequencing argument must be rejected because it suffers from many weaknesses. First, it lends itself to the perpetuation of authoritarian and feudal system. Second, autocratic governments in many parts of Asia have not succeeded in ushering in rapid or just economic development. Third, in authoritarian societies restraints on free speech prevent evaluation of development strategies by

those most likely to be hurt by them. Fourth, corruption, wrong priorities and poor implementation of poverty redressal programmes go unchallenged in societies where there are severe restraints on freedom of expression. Fifth, authoritarianism is mostly a one-way road with no U-turns allowed. In many states like Singapore where impressive economic growth has been registered, a liberalisation of the political system has not yet been allowed on the ground that the gains of the past cannot be risked to achieve alien and possibly ruinous values.

2.1.4 The Instrumentality Of A Free Market Economy

Like democracy, a free market economy is often seen as a pre-requisite to the promotion of a range of creative activities and entrepreneurship which are conducive to the gradual strengthening of human rights. Western, and especially American, thinking is deeply influenced by market capitalism and individualism and emphasises a whole range of commercial, civil and political rights. In political philosophy these rights are referred to as 'negative liberties'.

However, in the Constitutions of most Western countries, there is insufficient recognition of the need for socio-economic entitlements (or 'positive rights'). Western theory also does not emphasise the need for structural changes and social restructuring and rejects limits on the right to property and the right to trade freely in the capitalist market. The differing attitudes towards international currency speculators who have utilised existing market mechanisms to wreak havoc, cause social upheavals and economic disintegration in many Asian economies clearly underlines the differing attitudes towards market rights. The Asian position is that free markets can accentuate problems of socio-economic injustice. Free market capitalism resists structural changes. It fosters an environment in which strong enterprises flourish and the weak die unless there is state control and paternalism to protect the weak against the strong.

Suppose that in a globalised market, the Malaysian economy is flooded with cheap, synthetic rubber. Suppose also that synthetic rubber industry is destroying the life and livelihood of thousands of natural rubber farmers who are in no position to compete with conglomerates. Is not the government justified in taking measures to protect the weak, indigenous industries against international giants? Or must Darwinian evolution be allowed to take its course so that only the fittest survive?

Free market capitalism idolizes the creation and accumulation of wealth and redefines the value of human achievement in purely financial terms. It gives primacy to material acquisition over human dignity. It glorifies self-serving individualism. It treats the world as if the world was a gigantic market place. It leaves the poor to fend for themselves. It elevates commerce to the level of culture and converts society into a market society.

The ruthless manner in which currency speculators and hedge fund dealers were able to impoverish the economies of much of Southeast Asia and drive the poor to the abyss of despair indicates that the connection between human rights and a free market is by no means an entirely beneficial one.

2.1.5 The Fountains of Freedom

In our times human rights have thrived best in the West. But historically speaking human rights were not born in the crucible of Western civilisation. Concern with the dignity of human beings was common to the religious traditions of the East. America and Europe, after centuries of human rights violations, adopted this ethic only in the last few decades.

The widely held belief that the human rights movement is a product of Anglo-Saxon, Protestant culture is historically unsupportable and is based on a biased, ethnocentric world-view.

In fact, all the ancient religions of the world promoted an ethic of humanity.⁹ Though there is some difference of emphasis in the doctrines of Christianity, Judaism, Islam and Buddhism, concern with the dignity of human beings is common to all these religions. Questions of social justice are among the most common concerns of these traditions.

In the theory of Islam, for example, human rights have been accorded an honourable place and it is noteworthy that not only political but also socio-economic rights have been given legitimacy.

On the basic right to human dignity the Holy Qur'an declares: "Surely we have accorded dignity to the sons of Adam" (17:70): On equality the Holy Qur'an says: "And if ye (O Muhammad) judge between mankind, judge justly" (4:58).

One non-Muslim commentator has suggested that Prophet Muhammad's farewell sermon at Mount Arafat nearly fourteen hundred years ago "is one of the world's outstanding human rights documents".¹⁰ In it Prophet Muhammad proclaimed: "Your lives, your properties and your honour are as sacred as this day (of the Hajj)". On class distinctions he said: "The aristocracy of yore is trampled

⁹ See generally, Ted Stahnke and J Paul Martin, *Religion And Human Rights: Basic Documents*, Center for the Study of Human Rights, Columbia University, 1998; Richard Harries, "Human Rights in Theological Perspective" in Robert Blackburn and John Taylor, *Human Rights For The 1990s: Legal, Political and Ethical Issues*, Mansell, London, 1991, p. 1; Shad S. Faruqi, "Human Rights in Legal and Political Philosophy", *INSAF - The Journal of the Malaysian Bar*, Dec. 1992, pp. 1-19.

¹⁰ C G Weeramantry, *Islamic Jurisprudence: An International Perspective*, Macmillan Press, 1988, p. 172.

under my feet. The Arab has no superiority over the non-Arab and the non-Arab has no superiority over the Arab. All are the children of Adam and Adam was made of earth. Nor is the fair-skinned superior to the dark-skinned nor the dark-skinned superior to the fair-skinned; superiority comes from piety and the noblest among you is the most pious”.

Islam has a strong aversion to social hierarchy. Egalitarianism is its central social theme. It opposes the existence of the absolutist state or of an omnipotent executive or legislature. Though there is a duty on all Muslims to obey their leaders, this duty is conditional upon the duty of the ruler to observe the trust reposed in him by God and the subjects. The ideas of social contract and civil disobedience (against an unjust ruler) have been part of Islamic political philosophy long before Locke and Rousseau popularised them in Europe.

The Holy Qur'an calls on political leaders to govern through consultation. There are seeds here for the development of a modern participatory state.

In Islamic criminal law, the accused is presumed innocent until proven guilty. Unlawfully obtained and hearsay evidence is not admissible. The evidence of an agent provocateur is not to be considered.¹² Every accused is allowed a prior hearing and an opportunity to defend himself. Principles of natural justice, developed by modern courts only in the last two centuries, were enshrined in the Holy Qur'an fourteen hundred years ago.¹³

In the matter of social justice, it must be noted that the ideal Islamic society must not only be free and just, it must also be caring towards the poor and the needy irrespective of their caste and creed. Every Muslim is obliged to pay *zakat* (alms tax) and, “this shall be taken from the rich and distributed amongst the poor and the needy”. The Holy Prophet once declared: “The government is the guardian of everyone who has no guardian”. In verse after verse, the Holy Qur'an enjoins the faithful to show charity and generosity towards the poor and the needy. In Pakistan the courts have relied on these provisions to hold that in Islam all persons, not themselves poor, are obliged to maintain their close relatives who are poor: *Haji Nizam Khan v. Additional District Judge, Lyallpur PLD 1976 Lahore 930*. This is one facet of social justice in Islam that could be emulated by societies where the state is unable to provide a social security net to those who are weak, helpless and marginalised.

¹² See generally, Mohammad Hashim Kamali, “The Citizen and State in Islamic Law”, *Syariah Law Journal*, 1986, p. 22.

¹³ Surah 4:83 & 94; Surah 17:13 & 14; Surah 48:6. See also the Pakistani cases of *Pakistan v Public at Large* (PLD 1989, SC 304) and *In Re Passport Act* (PLD 1989 SC 39) which relied on the Holy Qur'an and the Hadith (the sayings of the Prophet) to subject Pakistani legislation to the rules of natural justice.

It is clear, therefore, that in Islam's highly complex body of rules, beliefs, doctrines and assumptions there are plenty of elements that are congenial to and compatible with democracy and human rights.

Similarly, within Christianity, the 'liberation theology' seeks to liberate human beings from all that enslaves and oppresses them. Harries believes that "from the Exodus to the liberation struggles of today God is freeing people, not just from sin and death but from oppressive systems and structures".¹³ "This involves Christians today in a new commitment to the poor in line with God's bias to the poor revealed in the Bible". Harries further argues that positive discrimination is based on the Bible. "The biblical God is a God of the poor, the rejected, the despised: and he intervenes on their behalf so that the last shall be first... (The Bible's) theme song is an imperative to discriminate in favour of the marginalised: and its triumph song is an affirmation of God's vindication of the powerless".¹⁴

2.1.6 Human Rights And Religious Restraints

Many legal systems hold it as a cardinal principle of political faith that law and morality, the state and religion must be clearly demarcated. This brand of 'militant secularism' denies any significant place for religious considerations in the human rights discourse. Ordinary citizens do not think this way. Sometimes their passions get aroused to the extent that they take it upon themselves to mete out justice. This explains sporadic violence in the USA over the way in which abortion clinics conduct their controversial business openly.

Courts are often drawn into the vortex of controversy when individuals and groups begin to claim the "right" to homo-sexuality, same-sex marriages, abortion on demand, pornography, blasphemy etc.

In most Asian and African societies the religious basis of human rights is recognised and the political demand for personal liberties is subjected to religious, conventional and moral considerations.

It is submitted that the modern secular discourse on human rights should not ignore the religious underpinnings of the theory of the inalienable rights of man. Secular theories of human rights ought not to be treated as antagonistic to religious views. The two can complement and reinforce each other. Religion has a powerful hold on the hearts and minds of millions of people around the world. Religion's

¹³ Richard Harries, "Human Rights in Theological Perspective", in Robert Blackburn and John Taylor, *Human Rights For The 1990s: Legal, Political and Ethical Issues*, Mansell, London, 1991, p.1.

¹⁴ Harries, *ibid.*, 28.

support for the dignity of man and its insistence on moral limits on public and private powers provides powerful tools for combating oppression and injustice. For instance, in the United States in the 1960s, the Christian church rallied behind the Reverend Martin Luther King in his quest to lead the black Americans from the "dark and desolate valley of segregation to the sunlit path of racial justice". In Iran, in the 1970s, Islam provided a rallying point against the absolutist Pahlavi dynasty. In the Philippines in the 1980s, the moral support of the Catholic church against the abuses of the Marcos regime transformed a trickle of opposition into a torrent of revolution.

Religion is, has been, and will always be a potent force against tyranny. Its central tenet that all men and women are the children of God and that their personalities are therefore sacred, carries with it a belief in civil liberties and a repugnance to any ideology that exalts the state above the importance of man.

The discourse on human rights should, therefore, seek support of and guidance from religious doctrine because, unlike secular theories, the religious belief in the dignity of man cannot be easily brushed aside or outlawed.

2.1.7 Individualistic Versus Collectivist Notions

The Western/Northern/Anglo-Saxon/North Atlantic version of human rights tends to emphasise the individual and his rights against society. The individual's right to personal autonomy, his/her right to decide what constitutes the worthwhile and good life is treated with great tenderness. On a wide range of issues from suppression of vice and enforcement of public morality to inheritance, testamentary disposition, blasphemy and sedition, Western law tends to allow the individual a wide scope for personal choices. Asian societies, on the other hand, subject individual rights to collective welfare and communitarian and family values. In many Asian legal systems, the legislature and the courts view it as one of their functions to superintend the moral life of the community. Some years ago Singapore announced that the state will enact legislation to make it obligatory for children to support their aged parents. Islamic religious law does not allow a person to deny inheritance to his spouse or children. Testamentary disposition is limited to the bequeathable one-third. The rest of the property must go by way of inheritance. Poor relatives are allowed to go to the courts to seek subsistence from rich relatives.

In the field of civil and political liberties in Asia and Africa, considerations of social stability, peace and harmony are allowed to override the individual's right to express himself freely. Flag-burning, sedition, pornography and blasphemy are likely to meet a strong response from the law because of the general revulsion these practices elicit.

2.1.8 Rights And Duties

The dominant Western liberal philosophy emphasises an individual's rights but not his duties.

However, there is nothing in the quest for human rights to exclude one's duties to his family, to his community, to his country and to the larger world he inhabits. In legal philosophy duties and rights are co-relatives of each other and the existence of one pre-supposes the existence of the other. Most duties do not exist for their own sake but to protect the rights of fellow creatures and to promote their well-being.

For this reason Asian scholars argue that rights must go hand in hand with duties. In some Asian Constitutions, the chapter on fundamental rights is accompanied by a chapter on fundamental duties.

Asian scholars also argue that no human right can be absolute. There is no need to adopt an all or nothing approach as with free speech in the American legal system. Recently an American court declared a legislative attempt to censure pornography on internet as unconstitutional. Very few Asian scholars will be prepared to adopt such a dogmatic view of human rights. Rights and responsibilities must go hand in hand. Freedom is not an end itself. Liberty must not degenerate into licence. Liberty without responsibility is mindless just as freedom without food is pointless.

2.1.9 Human Rights Or Human Dignity?

The notion of a 'right to dignity' is used in many different ways by moral and political philosophers.¹⁵ In Kantian morality human dignity is understood to generate both duties to others and duties to oneself.¹⁶ It is permissible for the legal system "to prescribe duties that are designed to protect agents, not against others, but against the risk that they compromise their own dignity.... Human beings cannot give themselves away for a price, otherwise they would violate their duty of self-esteem."¹⁷ This reasoning is being put forward to criticise circus dwarfs for accepting jobs that deprive them of their dignity. Similar reasoning militates against gene selling and surrogate motherhood. A human being with dignity should not instrumentalise himself. The right of self-determination is secondary.

¹⁵ Deryck Beyleveld and Roger Brownsword, "Human Dignity, Human Rights and Human Genetics", *The Modern Law Review*, vol. 61, No. 5, September 1998, 666.

¹⁶ Immanuel Kant, *The Metaphysics of Morals* (Translated and edited by Mary Gregor), Cambridge Univ. Press, 1996, 209.

¹⁷ Deryck Beyleveld, *loc. cit.*

Western theory places emphasis on 'human rights'. Asian scholars prefer to use the term 'protection of human dignity' as the primary aim of the law. The vocabulary of 'rights' is shunned on the ground that the assertion of some rights is often incompatible with the preservation of human dignity.

For instance, if a person by his/her own volition chooses to lead the life of a beggar and to sleep on the pavements, or to become a sex-worker, or to misuse his/her wealth to gamble and to consume drugs and intoxicants, it is justifiable for the law to intervene even if such intervention subordinates the individual's personal liberty to the broader need to preserve the worth and dignity of the human personality. Or if some women assert their constitutional entitlement to equality by demanding the right to walk topless on the beaches in the like manner of their male counterparts, the law is justified in resisting this demand. The larger interest of protecting women's dignity permits differentiation between the two on the issue of toplessness.

Another reason for preferring the vocabulary of 'dignity' over 'rights' is that in some circumstances, assertion of individual rights can lead to the diminishing of collective welfare and dignity. For example in *Young, James and Webster v. United Kingdom* three employees of British Railways were dismissed for refusing to join a trade union. The duty to join was laid down by the 'closed shop' provisions of labour law passed by the Labour Government in 1974. The plaintiffs successfully applied to the European Court on Human Rights to establish that their freedom of association under Article 11 of the European Convention was broad enough to include the freedom not to associate. This decision can be cited as one which strongly affirmed the rights of individual workers but resulted in the weakening of trade unions, and indirectly, of all workers in their ability to bargain with powerful employers.

In many other areas, individual rights have to give way to the need for social and economic justice. For example, in the work place the freedom of a worker to contract with his employer is subjected to the paternalistic safeguards provided by labour and industrial laws to prevent exploitation of wage earners. Likewise in the arena of trade, commerce, banking and family laws, the legal system tries to protect the weak against the strong and in the process subordinates individual freedoms to the larger values that society seeks to preserve.

2.1.10 Human Rights And Private Centres Of Power

In Western theory there is emphasis on protection of the individual against the power of the state. The primary purpose of the law and the legal system is to surround official power with substantive and procedural fetters so that the engines of authority do not go berserk. Theories about the functions of the state tend to

reflect this concern with abuse of power. In Asian societies the state is seen as a protector, defender and provider. There is greater trust placed in the power of the state to ameliorate the human condition. Too many restrictions on the authority of the state are seen as preventing it from doing good.

Further, the threats to the rule of law are believed to emanate as much from private centres of power as from the state. It is for this reason that there is a more tolerant attitude towards state power and a near-total reliance on the machinery of the government for social engineering, social restructuring and protection against private centres of power.

2.2 Can The Twain Meet?

In sum, the Western concept of human rights stands out for its individualism, its support for freedom of contract, its emphasis on the right to property and its preference for civil and political liberties over economic rights. The West sees human rights as consisting largely of limitations on the power of the government. It proceeds on the assumption that human rights are transcendental.

In contrast, Asian formulations place individual rights in the backdrop of communitarian goals, argue strongly in favour of re-distribution of property and place emphasis on economic rights side by side with political liberties. There is increasing recognition that not only the structure of the state but also private centres of power pose a threat to human rights in Asia. There is appeal to relativistic and pluralistic values as opposed to monistic and universal values.

These differences should not, however, be exaggerated. A large core of shared values also exists between the East and the West and between national and international formulations of the rights of man. In the core of indisputable truth in the doctrine of human rights are such ideas as a people's right to self-determination, a right to non-discrimination on grounds of race or religion, the abolition of slavery, the prohibition of trade in women and children and, above all, compassion for the starving and the underprivileged.

A look at chapters on fundamental rights in world constitutions will indicate that despite the claim of cultural relativism some themes and some provisions seem to be common to most constitutions - Eastern or Western. This indicates evidence of global norms even if there is insufficient willingness to abide by them.

3.0 MORAL SUPERIORITY OF THE WEST: MYTH OR REALITY?

The nations of the North Atlantic have articulated the ideals of liberty with an eloquence that has no match in Asia and Africa. But as has been demonstrated

above, the quest for human rights was known to other civilisations long before Europe and America embraced these doctrines. What keeps this fact from being known is a collective amnesia in the Western world about the contribution of other races and religions towards the maturing of European culture and the development of its ideas on civil liberties.

As to human rights violations, these have been committed in all ages and in all territories. No nation has a clean record. Asia and Africa have much to be ashamed of. But anyone who knows history will testify that the nations of Europe and North America have a similarly horrendous record of human right abuses stretching back a thousand years. For the most part Western civilisation has neither acknowledged its brutal past nor apologised for it.

The inhuman manner in which slaves were captured in Africa and shipped to the North Atlantic countries has very few parallels in the annals of infamy except the holocaust in Germany and the bombings of Hiroshima and Nagasaki.

Colonialism was the worst form of human rights violation. It deprived millions of subjugated people of their dignity. In the last few centuries Western merchants, missionaries and military joined hands in a systematic programme of colonial conquest and cultural genocide. In some colonised countries like Namibia, large sections of the indigenous population were exterminated by the colonial masters in order to eliminate dissent. The aborigines in Australia, the Red Indians in North America and the blacks in South Africa and Namibia were often killed in cold blood. Hollywood celebrated the murder and de-humanisation of the Red Indians with blockbuster movies about how the West was won. Nearly a hundred years ago, on the central Philippines island of Samar, US colonial soldiers massacred thousands of Filipinos in retaliation for an attack that had killed 48 US soldiers. In hundreds of years of colonial rule, the British killed thousands of Indian citizens. In order to boost its own industries, Britain systematically destroyed indigenous industries in the sub-continent. Indians were not even allowed to manufacture salt from the waters off their own coasts.

In Australia the heads of dead aborigines were cut off from their torsos and exported to European museums. Australia forcibly removed thousands of aborigine children from their parents' homes and put them in state-run institutions where they suffered years of abuse. The UK had a long practice of exporting orphans to Australia where they underwent years of physical and sex abuse, some of it at the hands of missionary orders.

For many decades Australia and UK's immigration policies were racist in nature.

For many decades France and the UK have tested their atomic and nuclear devices away from home and in Asian backyards. The USA devastated Vietnam, Laos and Cambodia with intensive bombing and used defoliants which posed mortal danger to human lives. The dropping of the atomic bombs on Hiroshima and Nagasaki incinerated thousands of innocent civilians. Those who died were the lucky ones. Thousands of survivors were maimed for life and met slow, painful deaths.

In 1948 much of Europe and America watched with satisfaction as Western assisted, terrorist, Jewish groups backed by the Israeli army destroyed 400 Arab villages and drove 700,000 innocent Arabs out of their homes into a life of shame and degradation in refugee camps. European and American complicity in the dehumanisation and brutalisation of the Palestinians is surely one of the greatest acts of inhumanity this century.¹⁸ But the conscience of the self-appointed conscience-keepers of this world is hardly pricked by this outrage.

The US-led economic embargo against Iraq and Cuba has hurt countless children and women.

The world is little aware that Bosnian Muslims have been the victims of genocide throughout the last three centuries. From 1941 to 1945 about 100,000 Bosnian Muslims were slaughtered. In the Balkan Wars of 1912-14, around 13,000 Muslims were forcibly converted and over 3,000 were killed. No one was punished for these crimes. One is left wondering whether the collective amnesia of the European nations towards these monstrosities contributed to the slaughters and ethnic cleansings of the last few years.¹⁹

The way Muslims and Arabs are demonised and caricatured in the Western press is indicative of deep-seated racism and religious bigotry. It is this same race and religious bigotry that is behind the Western indifference towards the suffering and brutalisation of the Muslims in Palestine, ethnic cleansing in Bosnia and genocide in Chechnya and Kosova. Somehow the conscience of the world community and of the Western-dominated media is not aroused when democratically elected Muslim parties are denied the fruits of their electoral victory in Turkey and Algeria; when Muslim girls are expelled from French and Turkish schools because they wore scarves to cover their hair in accordance with religious beliefs; when the Kashmiri Muslim majority population is terrorised by the excesses of the Indian army; when racist murderers like Radovan Karadzic and General Ratko Mladivic

¹⁸ Public officials, journalists and book publishers who criticise Israel's policies are intimidated and their careers undermined. See Paul Findley, *They Dare To Speak Out: People & Institutions Confront Israel's Lobby*, 1985.

¹⁹ *Alijah Gordon, Bosnia: Testament to War Crimes As Told By Survivors*, Malaysian Sociological Research Institute, 1993, pp. Xv-xxix.

roam free to direct genocide in that part of the world; when Iraqi children die because of lack of medicine due to the economic embargo; and when American soldiers shoot dead 800 Somalis in a botched attempt to kidnap Somali factional leader Idid.

Neither is there any concern when the industrialised countries export their toxic wastes to the third world; when medicines banned in America are re-labelled and sold in Africa; or when the US, Britain, France and Sweden spearhead a nefarious trade in weapons of war and destruction.

Undemocratic regimes in Asia and Africa are rightly criticised, but selectively, for their violation of the rule of law and human rights. But at the same time, democratically elected regimes which refuse to toe the American line are overthrown with overt and covert operations.

In the Marianna Islands under US control, immigrant workers are brutalised and denied any protection of the law. The United States resists pressures to make the United Nations and other international institutions more democratic in their composition and more transparent in their decision-making process. Obviously, democracy is good only within nations but can be dispensed with between nations at the international level.²⁰

It is to the credit of the Western world that within its own legal systems it has set up institutional safeguards to protect and promote the rule of law and human rights. But beyond their shores American and European governments and the captains of their industries continue to commit flagrant violations of the rights and dignity of millions of Asians and Africans.

Despite these transgressions, the facade of Western moral superiority in the area of human rights remains as strong as ever. There are a number of reasons for the success of this mirage.

First, what amounts to a "human right" and what amounts to a "human rights violation" is determined exclusively by a few North Atlantic nations that control the flow of information and exercise a disproportionate influence on the hearts and minds of the gullible. There is an Alice in Wonderland explanation about all this.

"When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean - neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master - that's all."

²⁰ See generally, essays in *Dominance of the West over the Rest*, Just World Trust, 1995.

Thus, the existence of preventive detention laws in many Asian societies is criticised, and rightly so, as a violation of the idea that no one should be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts. But in the UK the plethora of laws permitting the police to arrest without a warrant and to use illegally obtained evidence are seen as necessary weapons in the fight against crime. Nationality laws with racist overtones, blasphemy laws which discriminate against religions other than the religion of the Church of England, harassment of a Sikh bus driver who wished to wear a turban to work, forced resignation of a Muslim school teacher who wished to take half-an-hour off to say his mandatory Friday prayers in congregation, are not seen by human rights crusaders as serious violations of any ideals.

US prisons use chains to restrain prisoners convicted of ordinary crimes. Gross violations of people's privacy by an intrusive press in many Western societies are seen as an expression of free speech. Media trials of persons accused of criminal offences are not viewed as an attack on due process. Caricaturing, stereotyping and demonising of certain religious and racial groups are not seen as a form of racism.

Sometime ago America was prepared to invade a central American state and kidnap its head of state on the unproved allegation that he was involved in drug trafficking. But nothing is said of many Western heads of states involved in arms trafficking.

The US system of justice has locked up 1.5 million young black people and put another 8.1 million on parole. This underclass has no parallel in any other industrialised country.²¹

Other factors which help to suppress news of human rights violations in the industrialised world and to present a larger than life picture of democracy in the North Atlantic countries are Western control of the means of communication and the excellent communication skills of American government and corporate figures. Colonialism has left its psychological impact and many Asian and African intellectuals are psychologically conditioned to view the world through Western prisms. It is one of the surest marks of oppression that the oppressed begin to act and think in the ways of their oppressors. Western education has contributed to a feeling that everything beautiful, good and wholesome was born in the crucible of Western civilisation and that other civilisations are poor imitations of the glory that is the West. The economic, political and military successes of Europe and America reinforce this myth of the superior record of Western civilisation.

²¹ The racism of the American system of justice is well documented in four book reviews of Randall Kennedy's, *Race, Crime And The Law* in the *Harvard Law Review*, volume III, March 1998, pp. 1256 - 1322. See also Robert Lefcourt, *Law Against The People*, Vintage Books, 1971.

What is needed is a genuine dialogue and an honest external audit to help nations along the path of self-discovery.

4.0 GLOBALISATION AND HUMAN RIGHTS

Globalisation means different things to people of different persuasions. As a phenomenon it is full of glory and hope for the euphoric and loaded with concern and despair for the sceptical.

For enthusiasts it means the creation of a world wide market in a "borderless world". It implies opportunities to invest and do business in situations in which trading rules and barriers, set up by governments to protect the interest of indigenous traders or players favoured by the state, are slowly lifted - a process termed de-regulation.

Globalisation is having a very positive effect on the market rights of those involved in international trade and commerce.

Globalisation means easy access to information and communication from one system and one culture to another. The benefits of this development for education are indeed very significant.

Globalisation facilitates alternative sources of information to those who are armed with modern techniques of communication. The citizen's right to know is fortified. The attempt by authoritarian governments to perpetuate a regime of censorship and control faces increasing problems. With globalisation there is better chance for openness, transparency and accountability in the government. News about repression is now difficult to suppress.

Globalisation is increasing pressures on governments to conform to international norms of conduct in citizen-state relationships. This is conducive to the flowering of the idea of international human rights.

But globalisation has its darker side.

In some respects, globalisation is a form of colonialism that has anointed itself with a new name. The implications for human rights are significant. Asians and Africans are being made to sacrifice their culture and heritage to the juggernaut of globalisation which is becoming the vehicle of monoculture and the means of commercial domination.

In the process of globalisation, the state ceases to play the traditional dominant role. Instead, the market rules supreme. But, as has been pointed out above, free markets can accentuate the problem of inequitable distribution. Free market

capitalism resists structural changes. It fosters an environment in which strong international enterprises flourish, and weak enterprises owned by individuals or the state slowly fade away. If the state loses its ability to provide a check and balance against the laissez-faire market, who will then protect the small-scale businesses against the international corporate giants?

Globalisation has provided the stimulus for privatisation.²² Governments everywhere are casting off their traditional financial burden of supplying essential services to the public. These services are being handed over to the private sector to be run on a profit basis. Consequently the poorer sections of society are finding it increasingly difficult to afford many essential services.

The easy access to information that globalisation engenders does not always guarantee access to a truthful and fair depiction of facts and events. We cannot understate the role played by those who are in a position to dictate the content of what is communicated. It is widely believed in Asia and Africa that the globalisation of the audio-visual media has increased the domination of American perspectives, tastes, practices and values.

With the aid of new technology, pornographers and purveyors of undesirable ideas now have a world stage. Parents and schools are losing their right to select the information their children should be exposed to. The red light districts of cyberspace are now accessible to our children at the touch of a button:

Globalisation is increasing pressures on governments to grant more political and civil liberties to their subjects. But globalisation is also permitting mighty global players to raid national markets; make huge, quick profits at crippling social and economic cost to citizens of the 'host state'. This creates an ironic situation: globalisation is helping Asians to gain more civil and political freedoms but it is also diminishing their socio-economic welfare. Our economies are going bust. Our houses are on fire. While they burn, a small number of market players from the industrialised countries are sitting around the fires to warm their hands! Resentment is growing that in the globalised market place, light-weights are being pitted against heavy-weights and the contest is being conducted under rules framed by the latter!

5.0 THE ASIAN ECONOMIC CRISIS

No region in recent history has suffered such a drastic reversal of fortunes as East and Southeast Asia. As a result of the economic crisis, years of development and poverty reduction are now at risk in Asia.

²² K. Balasubramaniam, "Privatisation of Health and Its Impact on the People of South Asia" in *Dominance of the West over the Rest*, JUST, 1995, chapter 14, pp. 164 - 193.

In Malaysia during the last year, the Kuala Lumpur Stock Exchange (KLSE) composite index fell 79.3%. Market capitalisation of the KLSE slumped from about 900 billion to less than 300 billion. The ringgit has fallen 45-50% compared to the US dollar. Foreign loans have doubled in quantum due to the depreciation of the Malaysian currency. Imports have become unbearably high for industries relying on foreign components. Unit trusts and company assets have lost 60% of their value. Debts have increased exponentially because of compound interests. Before recent efforts to bring it down, interest rates had soared from about 7% to 14%. Healthy companies are suffering a credit squeeze. Recession has hit us hard. The economy contracted by 7% after years of 7-10% growth. The construction industry almost came to a standstill and is saddled with the greatest debt burden. Public revenue from taxes has dwindled 50%. Bankruptcies have become inevitable for many small and big businesses whose loans have become unserviceable due to rise in interest and exchange rates. Inventory liquidation has become a lucrative business in Malaysia!

It is apparent that our economy is awfully susceptible to damaging speculative runs from abroad. This raises questions about what type of foreign participation is beneficial given the fact that we need foreign funds for our growth. Foreign funds can be invested in three ways. Firstly, through foreign direct investment (FDI) where investors set up factories and long term facilities and help to develop new capabilities. Sadly, only about 10% of foreign money comes in for FDI. Secondly, through development loans. Thirdly, portfolio investments involving off-shore parties buying local shares and currencies. In 1997 these funds pushed the KLSE capitalisation to 375% of GDP. Sadly, Malaysia's much touted growth in the nineties was, to some extent, due to the inflow of speculative capital. This is what created the vulnerabilities. And so when the plug was pulled and the shares and currencies were dumped in large quantities, we were left helpless.

The social cost of all this is monumental. Retrenchments and unemployment are on the rise. The public and private sectors have stopped recruiting new employees and fresh graduates and professionals are facing difficulties finding suitable jobs. The foreign working force is the worse affected.²³ Despite this, the deluge of illegal immigrants into Malaysia is continuing with all its attendant social and economic ills.

Due to decline in public funds, subsidies for education and health care have been reduced. Poverty remedial projects have been sidelined. Inflation is ravaging standards of living but salaries and benefits have been reduced. Imported goods

²³ *Implications of the Economic Crisis on Migrant Workers*. Proceedings of a One Day Consultation organised by Tenaganita Malaysia, Kuala Lumpur, March 14, 1998.

have appreciated drastically in price. Privatisation has also increased the prices of essential services. Disparity in distribution of wealth has increased. The social security net has shrunk.

Public educational institutions have had their budgets slashed by 25% and their enrollment increased by 20%. Many parents who had sent their children abroad for studies have had to recall them.

The political impact of the economic crisis is also significant. The strategic direction, control and policy framework of national economies seems to have left the hands of the elected government. The unelected, inscrutable, American-dominated IMF has begun to control national economies.

The forcible opening up of emerging economies to external participation, without the necessary back-up institutions, has led to the domination of the financial sector, especially the stock market, by foreigners who are able to pick up shares at basement prices.

However, unlike in Indonesia, Thailand and South Korea, opposition to the government has not increased drastically. This is because unemployment, inflation and foreign borrowing are under control. No devastating riots, food shortages or political convulsions have occurred. But if the economic situation deteriorates further and the government's capacity to deal with it is inadequate, more voices of dissent will be heard. This may lead to one of two things: repressive measures to curb dissent or more openness and transparency in government. At the moment, there are currents and cross-currents and the future is difficult to foresee.

6.0 INTERNATIONAL RESPONSE TO THE CRISIS

More than one and a half years after the Asian economic crisis, those who control the global economy are reluctant to check the trigger that set off the turmoil - volatile, short-term speculative capital flitting in and out of markets in search of quick and massive profits. Instead the focus had been put on weakness within national systems.²⁴ Some of these weaknesses are real and require urgent redressal.

The international response underlines the bias in Western human rights theory in favour of protection against state power and insufficient attention to the potential threat to human rights from private centres of power - in this case the invincible currency and fund managers who have wreaked havoc upon the economies of Asia.

²⁴ For American thinking on the turmoil in Asia, refer to Robert Wade, "The Coming Fight over Capital Flows", *Foreign Policy*, Winter 1998/99. Also, Geoffrey Garrett, "Global Market and national Politics: Collision Course or Virtuous Circle?", *International Organisation*, Autumn 1999.

It is ironic that the governments and organisations supposedly concerned with human rights are indifferent to the social cost that is borne by the population as a result of the activities of a small group of international financiers. It is also ironic that the United States is opposed to the creation of an Asian Fund to help Asian economies in distress. Even IMF whose original mandate was to ensure stability in the world's markets is unwilling to tackle the currency traders and the hedge-fund managers. The IMF has also shied away from criticising military expenditure. It has focussed cost-cutting on social expenditure even though this will hurt the poor the most. This indicates that to the ideologues at the IMF, socio-economic rights are dispensable in favour of market rights. Liberalisation and de-regulation are more important than the satisfaction of the basic necessities of the people. Economic efficiency is overriding even if this results in high social cost.

It is also ironic that though there is clear evidence that the unregulated flow of capital benefits only a small segment of humankind, the United States is not agreeing to measures to make currency trading more accountable and transparent.

What economic reforms are needed are for the economists to determine. From the human rights point of view, it appears that new rules are needed to regulate the international financial system. We need a free market but with a social conscience. The two are not incompatible. The unbridled liberalisation of global markets leaves us, ordinary folks, extremely vulnerable. The value of our shares, our pensions, our installment-payments drops drastically. Our domestic economy is turned upside-down. We watch helplessly.

Untamed, the beast of globalisation is a danger to democracy in the sense that in a world as a single market, the money dealers rule. Where does that leave the democratic process? It is clear that economics is devouring politics. Commerce has become culture. State power has been handed over to financial oligarchs from abroad. They direct an ever increasing flow of footloose investment capital and decide on the weal and woe of entire nations. They do so largely free of state control.

The global financial anarchy and volatility is not conducive to the maintenance of long term national development programmes which have significant implications for a regime of human rights.

When the New York based Moody's Investor's Services changes a country's credit rating, the effects are enormous. But institutions of this sort over-emphasise the importance of share markets in the economy much to the detriment of the "real economy". Whether these institutions act impartially; whether they hear both sides before they issue their verdicts; whether their criterion of evaluation is fair, just and holistic or is one-dimensional, are issues with distinct human rights implications for the developing world.

7.0 CONCLUSION

Globalisation is perhaps the most important phenomenon of our times. To many it is a pervasive, "relentless and near prudential force". Others see it correctly as "not entirely self-propelled.... Overtly or covertly its movement is backed by political and economic strategies as well as intellectual trajectories of long standing."²⁵

Whether unstoppable or combatable, one thing is certain: globalisation is a complex and contradictory phenomenon, both benevolent and malevolent.

In the arena of human rights it has done a lot of good by internationalising issues of human rights violations and subjecting authoritarian governments to international scrutiny. What has happened to Chile's Pinochet should send a chill down many a tyrant's spine.

By increasing access to information and opening up possibilities for networking, globalisation of the media is enabling disadvantaged people to mobilise support for their causes and to appeal to alternative sites of influence. Authoritarian states cannot anymore suppress information about human right abuses in their territories. Political and civil rights (like freedom of speech and right to participate freely and fairly in the electoral process) are the main beneficiaries of the globalisation movement.

However, globalisation is a complex and contradictory phenomenon with a far-reaching political, social, cultural and economic impact. Many aspects of it pose a serious threat to the culture and social welfare of the peoples of Asia, Africa and Latin America.

Politically, globalisation has very serious authoritarian tendencies. It weakens the nation state and compels it to submit to the dictates of the international market. Transnational corporations, international bodies like the IMF and credit-rating institutions like Moody's Investors' Services have now emerged as the principal sites of economic, social and political power. Elected governments have diminishing power and ordinary voters have a disappearing influence on socio-economic policies. What is alarming is that there is no international political organisation which is able to act as a restraining influence on international capital. International forums like the General Assembly of the United Nations and UNCTAD, which are well represented, have had their mandates hijacked by Western-dominated organisations like WTO, WIPO, IMF and the World Bank.

²⁵ Fred Dallmayr, "Globalisation and Its Impact Upon Civilisational Dialogue". Unpublished seminar paper at the Centre for Civilisational Dialogue, Univ. of Malaya, 1997, p. 1.

Social welfare policies are in peril. Globalisation is intolerant of state regulation of the economy.²⁶ It abhors subsidies, rejects the philosophical assumptions behind “redistributive justice” and favours legal equality or a “level playing field” (between players who are inherently unequal). It favours privatisation of state enterprises even though this may result in a steep increase in the price of essential goods and services. For example, the terms on which the IMF provided the bail-outs to several Asian states required them to (i) repeal the remaining barriers to the full integration into the world economy, (ii) liberalise investments by foreign capital, (iii) remove subsidies for local industries, (iv) privatise and de-regulate trade and the economy, (v) liberalise and stabilise labour markets (meaning remove legal protection for workers and trade unions), and (vi) reduce government expenditure (thus curtailing welfare provisions).²⁷

The requirement of a “level playing field” sounds good on paper. In reality it means that in the new economic order the rich and the powerful must be allowed to dominate, to monopolise and destroy the weak, indigenous players. The Darwinian law of the jungle must prevail - only the fittest must survive.

Civilisationally speaking, this is a regression to our not so noble past, and not an advance in humanity and compassion.

In the economic sphere the unrestrained movement of capital in and out of markets is forcing governments to bend over backwards to woo foreign investments and to permit investors to exploit economic opportunities in a predatory way. This is resulting in the degradation of the environment and the shattering of the lives of indigenous communities.²⁸

Finally, there is the cultural dimension. The juggernaut of globalisation is leading to a uniform mode of thought, life-styles and preferences. This is resulting in a civilisational crisis. Non-Western cultures are in danger of annihilation or assimilation.

In sum, globalisation is an instrument of domination and exploitation.²⁹ It emasculates the state and replaces it with the market. But, like the all-powerful

²⁶ Michel Chossudovsky, *The Globalisation of Poverty. Impact of IMF & World Bank Reforms*, Third World Network, Penang, Malaysia, 1997.

²⁷ Yash Ghai, “Rights, Social Justice and Globalization” in Joanne Bauer and Daniel Bell (eds.), *The East Asian Challenge to Human Rights*, Cambridge University Press (forthcoming).

²⁸ Edward Goldsmith, “Economic Development & Environmental Destruction”, *Dominance of the West over the Rest*, 1995, ch. 12.

²⁹ See generally, Chandra Muzaffar, *Human Rights And The New World Order*, JUST, 1993.

state which was destructive of human rights, the unrestrained, autonomous market is also a serious threat to the welfare and socio-economic rights of the weak and marginalised sections of society.

May I parody Lord Acton by saying that "Markets corrupt. Absolute markets corrupt absolutely!" Never in history have markets been trusted to bring social justice to the weak and the downtrodden. From the human rights and social justice point of view, we should not delude ourselves into believing that in the globalised economy, predators will change into protectors.

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