Human Rights and Governance in Asia

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THE INTERNATIONAL CONTEXT OF HUMAN RIGHTS AND DEMOCRACY

The history of human rights is ancient but its contemporary salience can be traced to the establishment of the United Nations and the proclamation by its General Assembly of the Universal Declaration of Human Rights in 1948. Since then, the UN and related agencies have concluded a number of Conventions to implement the provisions of the Universal Declaration by elaborating detailed formulations of specific rights and establishing some machinery for their supervision. Much of this work was done in committees of officials and did not, for the most part, attract much public attention. There were undoubtedly differences among groups of countries on the scope of particular rights, the priorities among them, and the extent of their enforceability. These were resolved within the committees and did not engage great public interest (even in the highly controversial instance of the right to development). However, in the last few years, questions of human rights have achieved a high salience. This is attributable to the collapse of the communist regimes in Europe, which removed the cold war agenda and introduced space for discussions on liberty and freedom. The West took the opportunity to develop another agenda centering around human rights and democracy. This interest coincided with the growth of highly visible international NGOs which assumed a major responsibility for the scrutiny of the record of individual countries on human rights. The link of human rights to democracy was established through the work of international aid agencies, particularly the World Bank and the USAID, which made "governance" a central feature of their development assistance. Good governance was largely equated with democratic institutions and practices (including transparency).

The result of the approach of the West was to bring out clearly the implications of the human rights work steadily (and indeed some times obscurely, as with the Convention on the Rights of Migrants) developed through the UN and its agencies. It brought to the fore the responsibility of the international community for the protection of human rights everywhere, and thereby highlighted the ways in which national sovereignty has been qualified by the UN Charter and the human rights conventions. Relations between a state and its nationals were no longer a matter merely for that State; some fundamental norms of that relationship were now defined in the international community as also to its sanctions. International relations themselves are increasingly mediated through human rights discourse and practice. Aid conditionalities, unthinkable a decade ago, have become common place. The legitimacy of international involvement

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was heightened not only by the moral authority of human rights and the collapse of political regimes associated in many minds with their denial, but also by the willingness of several countries to accept international assistance for establishing human rights and democracy (Eastern Europe, Russia, Nepal, Cambodia, South Africa, etc) and considerable public support in many countries for such intervention in their own case. Further, support for the emphasis on human rights and good governance was secured through arguments about their link to sustained economic and social development.

However, not all governments have taken kindly to the internationalisation of human rights and democracy. Many governments are unable to carry their opposition to it to international fora because of their fragile political and economic systems and the dependence on external donors. Several Asian countries, particularly in south east and east Asia, have offered a spirited rebuttal of this internationalisation (in much of this paper I talk of "Asian governments", so it is as well to make a disclaimer that not all Asian governments subscribe to the views attributed to some of them, but these are the more vocal and in regional meetings are able to muster a show of solidarity on the basis of their own ground, as demonstrated in the pre-Vienna conference meeting in Bangkok). They resent the inposition of the international community (and particularly the hegemony of particular countries within it) in their relations with their citizens. They also resent the leverage it has given these other countries (and international institutions) over their policies, and see the new approach as attempts to undermine their moral authority, disrupt their political stability, and retard their economic progress. Rather than as in some other regions, withdraw from the debate, they have sought to provide an alternative framework for the discourse of human rights and democracy.

Secure in the economic success of their policies which owe little to democracy or human rights, they contest the claims of the positive links between democracy (and human rights) and economic development. Indeed they argue that a measure of tight political control to ensure political stability is necessary for economic development in the kinds of society they have. The basis of political authority in Asia is rooted in concepts and practices different from those in the West. Another plank in their argument is that most of the rights which the West is purveying are "western" in origin, oriented towards an individualistic society and therefore inappropriate to Asia where the values of communal action are highly prized. Furthermore, the priorities as between different human rights vary from country to country, and certainly in their own States, the priority must be given to economic and social rights, which call for collective rights and government initiatives. In this way they dispute "western" notions of the universality and indivisibility of human rights. On a more doctrinal but basic level, they challenge the legitimacy of international involvement in human rights and national political systems on the argument that the fundamental principle of international law and

relations is state sovereignty (to which belong these questions).

The politicisation of human rights that has followed their internationalisation raises acute questions of theory and practice. What is the basis for international action on human rights? What justifies political and economic conditionalities? What abuses are inherent in conditionalities? How does one check these abuses, particularly those of "double standards" and "double speak"? Why should a State's competence to deal with its citizens be circumscribed by reference to human rights or governance ? At the heart of this debate lies the nature of human rights and the source of their authority. Are human rights determined by the culture or economic development of a country, contingent on history, or do they represent universal values true for all time and places? Stemming from considerations of theory and strategies, are some rights more basic than others? Is there a sequence in the development and achievement of human rights? How are human rights and democracy linked to economic and social development? These are in fact extraordinarily hard questions, to which political theory does not provide ready answers. Yet some resolution of these questions is essential to place current international debates within a more rational, objective and agreed framework. The Vienna World Conference on Human Rights failed to resolve these issues, despite a "consensus" document.

THE NATURE OF HUMAN RIGHTS

There is a broad agreement that a key purpose of society is to ensure the dignity of the human person. For many people, human dignity is to be secured through the protection of human rights. Others have different views on how to achieve this aim but all would concede some role for human rights. However, there is no general agreement on the nature of human rights. The conception of the basis of human rights has varied from time to time, and from place to place. For a long time in the West, the belief that rights were derived from a divine ordering held sway, but it gradually gave way to the notion that rights originated from and were a response to the very nature of man. In that sense they are inherent and inalienable. This secularisation of the source of human rights arose under certain social and economic systems and consequently to emphasise individualism. In one way, it could be argued that basing human rights on the nature of man (and these days we must concede, woman) should lay the foundations for a universal regime. Unfortunately, this has not been the consequence for a variety of reasons, it would seem. First the "man" of the market system is acculturated in its peculiar values and dynamics, "disembedded" from the community. In societies where the dominance of the market over culture and community has not taken place, this view of human rights does not command universal acceptance. Similarly where the sway of religion is strong, the secular basis of human rights affects their acceptability, for which they must draw from the orientation of a particular religion. Since it is claimed that

community (and its culture) and religion are essential to the way society is organised in Asia, a purchase on some theoretical and practical questions posed above can be secured through an examination of their relationship to human rights. That should also help us to discover if there is a distinct Asian view of human rights.

Religion

While some commentators have argued that religion provides the basis for a conception of universal regime of rights since all religions have the same fundamental values, others maintain that religious values vary and thus negate the concept of a universal regime. An immediate difficulty facing an exploration of the question whether a distinctive Asian perspective on human rights emerges from the religion of its people is that there are numerous religions in Asia, including all the world's major ones. Assuming that religion does indeed influence a people's perception of human rights, then one would have to concede that there would be a plurality of perspectives, not one. Even if we concede that for our enquiry what matters are "Asian" religions (Hinduism, Islam and Buddhism plus the influential set of beliefs represented by Confucianism), as reflecting more accurately Asian pre-dispositions, they too vary in their beliefs and values. Nor does the same religion manifest itself uniformly in its discourse about human rights at all times and in all countries. Buddhism is militant and aggressive in Sri Lanka, asserting ethnic and religious superiority of one section of the population, while elsewhere, as in Cambodia, it has been a force for peace and the protection of the rights of all communities. Hinduism was once seen as tolerant and non-proselytising, providing a constitutional basis for secularism in India; today many of its adherents are militant and attack beliefs and institutions of other religions. The Hinduism of Nepal is more syncretized than of modern India, able to co-exist and even assimilate with other religions. In many east Asian countries, all religions seem to be mediated through Confucian thought and values, detracting from the specificity of the religion.

In many places religion takes its coloration from politics, woven into the apparatus of the States or claiming a special eminence in the affairs of the State. While western States separated State and religion (whatever the influence of religion on human rights), the contemporary tendency in many parts of Asia (particularly South Asia) is to connect religion with State. In some instances this has served to diminish the scope for human rights. Sometimes religion acts as a conservative force, at other times it is a major factor for change (and the same religion can play these opposite roles if we compare Christianity in Latin America with that in Europe). Religions can also lend themselves to alternative interpretations. Texts of most religions can be moved for contradictory propositions. In the circumstances, is it best to separate the discourse of human rights from religion? One answer is no, on the assumption that since Asian

people rely on religion for spiritual sustenance and some times political authority, rights should be anchored in religion. This is also a way to counter the argument that human rights are foreign constructs by providing an autochthonous base for them in Asia beliefs and values. Therefore, it is argued, that a selective mixing of texts is justified.

The question remains, however, whether religions can provide a basis for a universal regime. It is some times said that all religions are animated by the same concerns and values. Unfortunately this statement does not hold, since different values are enshrined in different religions. Some like Hinduism have sanctified social and caste distinctions, and others like Confucianism, established a social and political hierarchy. Nor is equality the hall mark of Islam, for despite its ideals, its practices cleaved to a tribal and unequal society of its origin. Christianity justified slavery for centuries, and Christian based western political systems did not accommodate the equal rights of blacks and women until this century. Not all Asian States (including the largest of them) encourage the holding or the exercise of religious beliefs (preferring to base their source of rights in popular sovereignty). Religions would not appear therefore to hold the key to universalism. Indeed most religions in some sense deny the claims of equality: traditionally Hindus found people of other religions polluting, and most other religions have a notion of the "non-believer" to whom an inferior status is accorded in both religious and secular systems. Nor does religion provide a basis for arguing that there is a distinctive Asian perspective on human rights.

Culture

If an interest in religion is motivated by the wish to find common roots for human rights, culture is explored to explain diversity and specificity. As noted above, some Asian governments claim that their societies place a higher value on the community than in the west, that individuals find fulfillment in their participation in communal life and community tasks, and that this factor constitutes a primary distinction in the approach to human rights. The western pre-occupation with individualism is explained by the alienation resulting from its economic system which has sapped the vitality of the community, and forced introspection on individuals as means towards their identity. This argument is advanced as an instance of the general proposition that rights are culture specific.

As with religion, culture does not provide a basis for a common Asian perspective, since its cultures are varied (negating the claim of some Asian governments that there is a distinctive Asian culture/community which is juxtaposed to the individualistic and materialistic culture of the west). Secondly as with religion, culture is subject to change, and in Asia it has changed under the influence of national and global markets, western systems of education and government. These themselves have had an unequal influence in different parts

of Asia, both reducing and sharpening previous differences of culture. The principal argument is that Asian cultures based on the primacy of the community, emphasise duties rather than rights, and that the ultimate test of an act or policy is the good of the community and not specific individuals. Whether it is so easy to distinguish the interests of the community from the individual is problematic. The emphasis on the community in multi-cultural and multi-ethnic societies (which characterise most Asian states) tends towards the dominance of one culture over others, and so leads to politics of control, if not repression — Asia is rich in instances of these situations. In these circumstances the community is divisive and destabilising, the exact opposite of the claims invoked in its name. The challenge of nation-building (another favourite argument for a lower salience of human rights) is thus the transcending and not the entrenchment of cultural divides. Even in relatively homogenous states, like Nepal, the community can be the repository of harsh practices and gross discrimination, and its reform can become a constitutional imperative (as indeed it has been so mandated in India and Nepal). There is the further theoretical problem in that in the modern Asian official discourse, the community is conflicted with the State, with the result that the rights but not the obligations of the community are transferred to the government. The relationship between the individual and the "community" is thus totally distorted.

Thoughtful Asians, who concede many of the above criticisms of a "communitarian" approach, nevertheless hold on to some important distinctions between the West and Asia, which they consider are rooted in culture. This is first the distinction between duties and rights. An aspect of this is the tendency in the West towards formalism, the formulation of values in terms of legal rights, and the consequent emphasis on the rights and prerogatives of an individual. Based on a theory of competition and suspicion of authority, this leads to demands rather than concessions, to confrontation rather than accommodation and harmony. An emphasis on duties on the other hand leads to honour and peace, as well as stability (because also to obedience). It is argued that the rights based emphasis leads to the impoverishment of society, so that in the search for the protection of the citizen against the State, the community collapses and non-state actors become the principal source of oppression and insecurity (making it unsafe to be on the streets of major metropolises after sunset). There is also the danger in formalisation of values as "rights" that the form may elude substance (so that the satisfaction of formal criteria hides realities that deny the values, as Professor Mazrui once said, the west may have abolished child marriages, but the number of teenage pregnancies and one parent families has vastly increased.

However, in the hands of an intolerant government, the concept of duties can become a justification as well as an instrument of authoritarianism. This is perhaps not inherent in the notion of duties, but duties are also laid upon rules (in the best Islamic and Confucian traditions), and indeed the notion of duty can

be truly revolutionary. In practice, however this is not often how it is, duties vary from person to person (persons at the top of the hierarchy having rights and those at the lower reaches, duties, frequently betokening social, economic or political subordination, tends towards conservatism and the perpetuation of inequalities antithetical to the claims of equitable development advanced by many Asian governments. Furthermore the conflation between the State and community serves to strengthen the tentacles of the government over society. It is also the case that the notion of duties transferred from the community to the State changes its nature from inter-citizen obligations and responsibilities to the much more problematic case of state-citizen relations. Nothing is more destructive of the community than this conflation. The community and the state are different institutions, to some extent in a contrary juxtaposition. The community, for the most part, depends on popular norms developed by consensus and enforced through mediation and persuasion. The State is an imposition on society, and unless humanised and democratised (as it has not been in most of Asia), it relies on edicts, the military, coercion and sanctions. It is the tension between them which has underpinned and sustained human rights. The West has to some extent separated civil society from the State, creating a "neutral" public area and space for communities (from which of course the commanding heights of the State may be controlled), while in Asia the tendency is towards the convergence of the two, regarded perhaps as necessary for the legitimacy of the State but ultimately destructive of the community.

Another distinction that is seen to flow from cultural differences is the role of the family. It is frequently said that the bedrock of Asian societies is the family, and it has become fashionable to ascribe social problems in the west to the breakdown of family life. It is claimed for Asia that mutual responsibilities within the family provide for the welfare of its members, ensure traditions of respect and rectitude, and promote social stability and economic development. The conversion of values into individual rights undermines the basis of family solidarity. However, countries which are not known for their practice of individual rights have found that the family may well be weakening under the pressure of other social and economic changes. A particular irony is that a legislator in Singapore, known to enjoy government support, recently introduced a bill to give parents the right to sue their children for maintenance (and the children the defence that the parents mistreated them when they were young!). It is hard to imagine that such a bill would achieve its objective of maintaining family solidarity!

The concern with the erosion of family values is instructive in a number of ways. At one level it minimises the Asian claim for cultural distinctiveness, and therefore relativity of rights. At another level it provides another basis for relativity. Societies are constantly changing, and with economic and social changes, there are also changes in the perception of what is important and valuable to a

community or a group. In other words, an assessment of the priorities in human rights alters with the underlying economic transformations. The west too has had its "communitarian" phase (and the community is still important there), and the family is still cherished, even if old solidarities are beginning to dissolve under economic pressures. Asian governments, which cheerfully and sometimes aggressively espouse " western" notion of development and the market, find that they can no longer ward off its child, 'human rights'.

The above analysis suggests that a useful perspective on human rights is drawn from history: the (dialectical) unfolding of rights, representing social achievements, etc. This in turn suggests that the development and understandings of rights are contingent on a variety of factors, moral ideas as well as material conditions, and that differences in their perception are attributable to them than to any inherent ideas of culture, community, etc. This approach does indeed provide a basis for reconciling so called "western" and "eastern" perceptions of human rights. In my view this provides a better basis for global debates on this subject. The notion that distinct "Western" and "Asian" perspectives exist is inaccurate, ahistorical, and leads to unfruitful polarities (ignoring for example that the west also has a notion of duty limitations on rights/freedoms). Equally it distorts the debates on human rights, by suggesting that the key conflict is between the east and the west, rather than that it is within each. It detracts from the relevance and urgency of human rights discourse in Asia, the keen debates on the appropriate models for representation, governance and accountability, and equity. Asian intellectuals and activists need to rescue the debate from the present sterile phase to place it at the centre of national and regional politics.

If the perception and practice of rights are related to the socio-economic conditions of the period, this means often no more than that it is the interests of the dominant groups which are represented as the primary rights. Yet there is a certain dialectical quality about human rights. While it is the interests of the establishment which receive the clearest representation as rights (e. g., the relative neglect of economic and social rights, other than property, in the US and Japan), it is the demands of the disadvantaged seeking recognition as rights which provide the moral imperative to the discourse of rights. Thus rights can be both conservative and revolutionary.

Even if we were to concede that Asian cultures or religions are distinctive and that these colour the perception and reality of rights, it is not clear why the global debate has taken the opposition of political and civil rights ("Western") versus economic and social rights ("Asian"). Why should the communitarian approach suggest that economic and social rights are more important than political? It may be argued that traditionally communities were hierarchically organised and that its cohesion depended on duties (although as we have seen duties and rights are regarded as different routes to the same goal, the dignity of

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man and woman). But the communities were even less concerned with "development" which is undoubtedly more of a foreign concept than fair or accountable administration or harmony within the community. If human rights do not follow from Asian cultures, then no more does economic development. The same can be said of "Asian" religions, which are stereotyped as other worldly (like most religions), more concerned with salvation in the next world than economic prosperity in this. Ethics are more important than power, and asceticism and austerity are values approved by most of these religions. Apart from the somewhat ambiguous position of Confucianism (which is mistakenly today regarded as development oriented rather than as preserving the status quo as traditionally regarded), there is little in "Asian" religions to support a privileged position for economic development. It is interesting that the most influential Christian church in Asia is Catholicism rather that the Weberian, development driven Calvinism or a variant of it! Asian governments are therefore on shaky ground when they invoke tradition to justify the primacy of development. If economic rights are seen to flow from "communal" or "collective rights", there is a misapprehension for these rights are normally attributed with "solidarity" rights to a clean environment, property as common, and a measure of equity, which are anathema to at least some Asian prime ministers).

If there is no substantial basis in community, culture or religion for economic and social rights, then why do Asian governments place such rhetorical emphasis on them? They sometimes say that civil and political rights are meaningless if the people are poor and illiterate. There is of course considerable truth in this, but there is reason to be sceptical about the sincerity of the governments for they have done little to establish economic rights or promote civil rights in countries which have achieved great economic success. The more plausible reason is that the talk of economic and social rights is diversionary, an attack on civil and political rights. Governments are anxious to minimise challenges to their authority or legitimacy, which means (as it seems to them) the suppression or emasculation of political opposition. A preference for economic rights might also arise from the consideration that it is much harder to hold governments accountable for them. They are for the most part matters more of standards than precise rules and entitlements, their enforceability is problematic and they are widely regarded as contingent on resources. In fact these governments dislike talk of economic and social rights, except when engaged in global debates (many of them do not like talk of any rights). It is not easy to establish how civil and political rights threaten economic and social rights. The juxtaposition these governments play upon domestically is not between these different rights, but between civil and political rights and economic development. It is economic development, not economic rights, that they emphasise. They are, however, content to seek economic rights of states, the so-called developing states (as in their advocacy of the 'right to development').

As compared to the proposition that civil and political rights damage prospects of economic rights, some of these governments have developed sophisticated arguments against civil and political rights based on the imperative of economic development. Briefly these are that economic development requires stable political conditions. It is then argued (or implied) that political and civil rights threaten political stability, particularly in a young country without established nationalism. Some authoritarian powers are necessary to ensure law and order, and to control ethnic tensions. Implied in this is also a riposte to western governments which argue that economic development is facilitated by democracy and political freedoms – an issue which is examined below under governance.

The globalisation of the debate on rights and the position of Asian governments therein raise several issues, three of which will be taken up here. These are the question of conditionalities; the relationship between civil and political rights on the one hand and economic and social on the other; and the connection between democracy and economic development.

Conditionalities

How far should (in this instance) western countries specify political conditions (relating to democracy or human rights) on their aid or economic relations with other (in this instance) Asian countries? What is the justification for conditionalities? How effective are they? The justification goes to the nature of the responsibilities of the international community for human rights, and here we have a confrontation between those who argue that contemporary international law has brought human rights within the jurisdiction of the international community and those (which includes most Asian states) that they remain securely within national sovereignty. From these perspectives, one difficulty is that conditionalities are rarely imposed by the international community. They are imposed by a state or an association of like minded states, which clearly affects their legitimacy. As national or regional initiatives they do not of course require to be justified by a rule of international law on human rights; they are within the sovereignty of the donor/trading state.

Conditionalities, however, raise other kinds of problems. There is the danger of "double standars" in a dual sense; the standards or human rights practices of the "donor" may be little better that that of the recipient, and the donor may pick and choose States for conditionalities, further politicising the practice of conditionality. Conditionality may threaten consistency in another sense; a state may decide that its national interests no longer lie in maintaining conditionality, and may abandon it after having initiated it (as with the recent US decision on MFN status for China). An important casualty of this change may well be human rights activists in the "recipient" country who have staked a great deal (personally

and otherwise) on continued support from abroad. Conditionality can also back fire if the local government decides to whip up anti-foreign sentiments on its basis as it may frequently suit its purposes. Conditionalities of the 'structural adjustment' kind are contradictory, denying the premise of democratic decision making. They engage the state and civil society institutions in a human rights dialogue with the donors, rather than with their own people. They may also sharpen polarities which are unlikely to be productive. It is also the case that smaller and weaker countries are more likely to be subjected to conditionalities (although the US policies in China and recently in Indonesia suggests that this is not universally true). Dialogue is clearly better than conditions.

Conditionalities may also cause offence because they imply a notion of universal regime of human rights, not accommodating cultural or other relativities (for otherwise there would be no justification on the part of the "donor" in imposing them other than narrow self-interest). To those who believe in relativities, this may seem merely as another form of cultural imperialism. They have also been seen as economic imperialism, for they have frequently embodied requirements of privatisation and deregulation and the general strengthening of the market mechanism, generally under the rubric of good governance. The relationship of these requirements to human rights is controversial. Conditionalities therefore raise several issues controversial in the debates on human rights, and will themselves remain a matter of contention unless there is a greater consensus on these issues.

POLITICAL AND CIVIL RIGHTS VERSUS ECONOMIC AND SOCIAL RIGHTS

The controversy over the priority of these two types of rights is not new. Representing a clash between "liberalism" and "marxism", it dominated the drafting of the International Bill of Rights, and resulted in a bifurcation of rights into two covenants (one concentrating on civil and political rights, the ICCPR, and the other on economic, social and cultural, the ICESCR). The ideological context of the controversy has, however, changed. By and large the market provides the matrix for the proponents on both sides. For example while the Soviet Union was firmly opposed to the right to property (which does not feature in the Covenants), Asian governments (including China now) are wedded to it. The difference between the two sides lies in the vision of the market. In western theory the market is autonomous, and the safeguarding of that autonomy requires a number of civil and political rights (property, freedom of movement, association and organisation, expression, an independent and rational legal order, etc). The control of the State, which provides the legal and administrative framework for the market, comes from an earlier dominance in civil society (emphasising yet again the importance of civil rights). Asian markets are organised in a much more authoritarian and rapacious manner; there is wide scale corruption; the State is a means to control over economic resources and civil society; and many

are still at the "primitive accumulation" stage. Administration is more important that the law; and the imperatives of control override those of economic autonomy. Ideological justifications for the success of the markets in Asia, harping upon the Confucian values of authority, obedience and the salience of the family in economic affairs, are used not to establish the irrelevance of civil and political rights but their destructive qualities. Economic rights get short shrift too, as in the current attitudes of some Asian governments to the rights of workers or the protection of the environment (which are seen, perhaps not without justification, as attempts by the west to reduce the competitiveness of Asian economies, but which nevertheless point to the shallowness of the commitment of many governments to economic rights). It is therefore unlikely that we shall get useful purchase on the question of 'economic and social v. political and civil rights' by examining the stance of Asian governments.

What then might be other approaches to the question? One is to move away from the polarities of civil and political rights on the one hand and social and economic on the other. Each has a bundle of rights which vary in their impact on the State and citizens and not all are individually oriented. Their disaggregation and the purpose each serves may suggest different and more productive categorisations. Another is to insist on their equal importance and indeed indivisibility. Since one's perception of rights is governed by the state of one's belly, it could be argued that a certain level of literacy and economic security are essential for the exercise and enjoyment of civil and political rights. Equally, economic prosperity and high literacy without the freedom of expression or the right of association fail to develop the full potential of the human person, and the denial of these rights can be humiliating and degrading (this position is increasingly being taken in recent international instruments on the rights of special groups – women, children and indigenous peoples, which have broken away from the bifurcation of the Covenants, being based on the understanding that real equality for women or indigenous people or the real protection of children's rights cannot be secured without major social transformation in their social and economic conditions). A variation of this position is to acknowledge that both sets of rights are important and even that they are indivisible, but to concede that it may not be possible to achieve them all at once (that reform of the legal system to ensure civil rights of fair and speedy trial for example can be as expensive as providing water supply to rural areas). This stance raises the question of the instrumentality and sequencing of rights. Professor Amaryta Sen has argued, for example, that a society that proclaims the urgency of basic needs, has first to have a democratic framework so that the society can decide what the basic needs are. He has also suggested that basic needs can probably not be met in a society which is not responsive to public pressures or public accountability. One might add that the transformative potential of human rights (and that must be their role in many authoritarian and unequal societies in Asia)

lies in the rights of association, speech and other trade union rights. One can turn to history for guidance on sequencing, but that might be another device to assert the priority of civil and political rights which may not be warranted in contemporary times. These issues are also raised in discussions on democratization as that implies a process. They are therefore best explored in the section on governance below.

DEMOCRATIZATION AND GOVERNANCE

The context of this discussion is the growing constitutionalisation of the political orders of several Asian countries – for example, Thailand, Taiwan, Pakistan, Cambodia, Bangladesh, the Philippines, South Korea, Hong Kong, Mongolia and Nepal. The process is extraordinarily complicated, for it involves issues, which although they are often regarded as of a piece, have different dynamics and consequences – the development of civil rights, the Rule of Law and a liberal culture, democratic reforms through the extension of the franchise and other political rights, the securing of economic and social rights, and fair and transparent governance (to which in some instances we should add marketisation). One problem is that in contemporary constitutionalisation, all these goals are being sought simultaneously. In any circumstances such a task would be daunting, but it becomes even more problematic because there may well, at least in the short run, be a conflict between them. In the nineteenth century, for example, the rule of law was considered to be under threat from democratization. Many countries in the transition to democracy in this century have built in a deliberate "democracy deficit", in part to placate its former enemies but also to create the capacity to absorb the social and political consequences of democratization. It could be argued in historical terms that as democracy was preceded by civil rights and the rule of law, it was acceptable (because the economic and social rights of the *bourgeoisie* would be protected) and feasible (because of the importance attached to values and procedures). While democracy itself set the stage for economic and social rights. The relevance of this analysis in today's conditions may be questioned, although a plausible case can be made out that the fragility of democracy in many developing countries is due to the lack of traditions of civil liberties and the rule of law.

Democratic theory does not provide clear answers to a number of issues that require an instrumental solution – does economic liberalisation lead to political freedoms or vice versa (the Russia-China debate), is it more important to concentrate on the strengthening of civil society or the reform of State structures, can purely secular organisation of public power command legitimacy, what are the pre-conditions of democracy, what is the link between marketisation and human rights, and indeed the connection between different kinds of rights.

Let me, as an illustration of the difficulties, explore some conflicts between

human rights and democracy. (I do not refer to the older debates as to whether an entrenched bill of rights interpreted by non-elected judiciaries are compatible with democracy and whether they weaken the political process by their "legalisation" consequences, for it seems to me that the political process might be enriched rather than impoverished by rights in most developing countries and that the executive and the legislature have frequently few claims to democratic legitimacy). The formalisation and adjudication of rights have thrust courts and tribunals at the centre of their definitions and enforcement and their discourse has become increasingly specialised. This detracts both from the responsibility and capacity of elected bodies for human rights. The globalisation of human rights detaches specific rights from the national context and relevance. The transformative consequences of economic and social rights (e.g., the revolution in the position of women or the shift of power from one caste to another in rural Nepal) may be threatening to an infant democracy because of the interests of incumbent leaders and influential groups. Marketisation may threaten social rights.

When there are conflicts, rights are likely to give in to democracy. Although rights are now prescribed in considerable detail, and democracy is still nebulous (no international instrument defines or protects it), democracy seems to command greater legitimacy, at least in Asia. Rights are harder to enforce than democracy, in part because of the differing precision of definitions. It may also threaten existing power structures. For that reason democracy may be used to suppress human rights. Democracy, seen largely as an electoral process, becomes plebiscitary. Democracy, seen as the access to state power, becomes manipulative and corrupting. Yet it is presented as the voice of the people, a talisman to ward off domestic and foreign pressures for rights and equity. But for that very reason it increasingly relies on, and caters to, sectional interests. In the South Asian context, ethnicity has frequently provided that sectional interest. Ethnicity, linked to the democratic or at least the electoral process, has had, for the most part negative effect on governance and human rights. Political parties have aggregated and articulated ethnic demands, the majority community has imposed its cultural forms on the state, and the rights of minorities have been trampled upon. The result has often been the militarisation of both the state and civil society and the application of oppressive legislation which has denied a whole array of political, civil, economic and social rights. And yet democracy of a sort has flourished and fed the process of the attrition of democratic values.

Time has come to forge and strengthen links between democracy and rights. Democracy, in all its dimensions, not merely electoral, has to be rehabilitated. The values of democracy provide the link to human rights. The strengthening of human rights would then mean strengthening democracy. But democracy, to validate and legitimise human rights, has to respond to the cultural and moral impulses of the society. Western forms of democracy (by

which I mean the forms of former metropolitan powers) have not been appropriate for Asia (any more than for Africa). This may seem a route back to relativism. But it is the relativism of forms, not substance, and may be necessary for some sort of regime of universal values underpinning the dignity of women and men.