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International Human Rights: A Perspective From India

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Abstract

The evolution of the international human rights regime has often been shaped by the push and pulls of political and historical forces and events at the expense of alternative approaches. The following Essay traces this evolution from the author's perspective, presents India's position in relation to the structure and environment of international human rights discourse, and outlines trends and characteristics that merit reflection.

INTERNATIONAL HUMAN RIGHTS: A PERSPECTIVE FROM INDIA

*Prakash Shah**

INTRODUCTION

The Preamble to the U.N. Charter¹ expresses the ideals and common aims of all the people whose governments joined together to form the United Nations. While expressing their determination “to save succeeding generations from the scourge of war,”² governments that belong to the United Nations declared their determination “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”³ Building upon and stressing these common ideals and aims, Article 1 of the U.N. Charter proclaims that one of the United Nations’ purposes is to achieve international cooperation in promoting and encouraging “universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁴

One of the first major achievements of the United Nations was the adoption of the Universal Declaration of Human Rights⁵ (“Universal Declaration”) by the U.N. General Assembly on December 10, 1948. Other international human rights instruments quickly followed the adoption of the Universal Declaration. This prompted the United Nations to focus more carefully on human rights issues, and caused the issue of human rights to occupy a central place in international law and in U.N. activities.

The evolution of international human rights has taken place on both legal and political planes.⁶ Legally, there has

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1. U.N. CHARTER.

2. *Id.*, pmbi.

3. *Id.*

4. *Id.*, art. 1.

5. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 (entered into force December 10, 1948).

6. For a more detailed account of the problems in various analytical classifications of human rights mechanisms and bodies, see THE UN AND HUMAN RIGHTS: A CRITICAL

been impressive growth in the number and scope of human rights treaty bodies and their optional protocols. Similarly, there has been a dramatic increase in the number of U.N. 'organs'⁷ devoted primarily to human rights matters, as well as a major increase in the time allocated by some of the existing organs to the human rights component of their mandates. Politically, U.N. organs and treaty bodies have served the function of raising awareness regarding human rights as a whole and directing attention to specific problem areas. The role of such treaty bodies and U.N. organs has been to interpret and monitor compliance with specific treaty regimes.

The major landmarks in the evolution of the international human rights regime are the U.N. Charter, the Universal Declaration, the 1966 International Covenant on Civil and Political Rights⁸ ("ICCPR"), the 1966 International Covenant on Economic, Social and Cultural Rights⁹ ("ICESCR"), the 1986 Declaration on the Right to Development¹⁰ ("Right to Development"), and the 1993 World Conference on Human Rights ("World Conference").¹¹ Also of notable significance in the international human rights arena, the Vienna Conference of 1993 established the Office of the High Commissioner for Human Rights.¹² These developments have been reinforced by a broad movement towards strengthening and mainstreaming the human rights dimension in the U.N. activities. The U.N.-sponsored international conferences of the 1990s and U.N. follow-up activities demonstrate the U.N.'s commitment to international human rights. Although the United Nations has contributed greatly to creating, shaping, and implementing the international human

APPRAISAL (Ed. Philip Alston ed., 1992). A number of factual details and analytical categories have been derived from Alston and Ricoeur.

7. See U.N. CHARTER, art. 7 (listing principle organs of United Nations).

8. International Covenant on Civil and Political Rights ("ICCPR"), Dec. 19, 1966, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966), reprinted in 6 I.L.M. 368 (1967).

9. International Covenants on Economic, Social and Cultural Rights ("ICESCR"), 6 I.L.M. 360 (1966) (entered into force on Dec. 16, 1966).

10. The Declaration on the Right to Development, G.A. Res. 41/128 U.N. GAOR 41st Sess., Supp. No. 53 at 186, U.N. Doc. A141/53 (1986).

11. Report of the World Conference on Human Rights, Vienna, June 14-25, 1993 (A/CONF. 157/24 (Part I)), Chap. III. The World Conference adopted the principle that human rights of women and of the female child are an unalienable, integral, and indivisible part of universal human rights. *Id.*

12. G.A. Resolution 48/141, 33 I.L.M. 303 (1993).

rights regime, the regime's evolution is not restricted to efforts through the United Nations. U.N. specialized agencies such as the International Labor Organization¹³ ("ILO"), United Nations Children's Fund¹⁴ ("UNICEF"), United Nations High Commissioner for Refugees¹⁵ ("UNHCR"), United Nations Educational, Scientific, and Cultural Organization¹⁶ ("UNESCO"), and a number of regional groups have played invaluable roles in international human rights evolution as well.

Although the evolution of the international human rights regime was poorly organized and at times inconsistent, the nature and scope of international human rights institutions have been subjected to substantial transformations. It has often been shaped by the pushes and pulls of political and historical forces and events at the expense of alternative approaches. The following Essay traces this evolution from my perspective, presents India's position in relation to the structure and environment of international human rights discourse, and outlines trends and characteristics that merit reflection.

I. *HISTORICAL, POLITICAL, AND PHILOSOPHICAL BASIS OF INTERNATIONAL HUMAN RIGHTS DEVELOPMENTS*

Western historical, political, and philosophical factors strongly influenced the international course of human rights development. The foundations of post-war architecture of human rights, initiated in the aftermath of World War II and manifested in the Universal Declaration and the 1996 Covenants to the Universal Declaration, was rooted in Western history. Furthermore, the social, economic, political, and philosophical impacts of the Intellectual Revolution in Europe in the 17th-19th centuries deprived the conceptual underpinnings of international human rights. The most notable developments were the challenges to, and breakdown of, the European feudal structure, accompanying democratization, the rise of individualism, the separation of church and state, the secularization of law and politics, the primacy of scientific and legal discourse over religion, and the in-

13. International Labor Organization ("ILO"), *reprinted in* 28 I.L.M. 1382 (1989).

14. United Nations Children's Fund Report on State of World's Children ("UNICEF"), 23 I.L.M. 236 (Jan. 1984).

15. The Statute of the Office of the United Nations High Commissioner for Refugees, GA Res. 428 (V), Annex, para., 5 UN GAOR Supp. (No. 20), UN Doc. A/1775 (1950).

16. United Nations Educational, Scientific, and Cultural Organization ("UNESCO"), 10 I.L.M. 289.

fluence of Protestant thought on traditional Catholic values. According to the traditional philosophies of John Locke, Jean Jacques Rousseau, Immanuel Kant, and others,¹⁷ rights inhere in the individual. They are not delegated to the individual by any person, state, or other entity. Individual sovereignty precedes that of an organized state and, thus, asserts and imposes certain limits on the actions of the state against the individual. Individual sovereignty places constraints on government actions and collective decisions and gives individuals certain autonomy rights and initiative.

This Western historical, political, and philosophical imperative had a counterpart in the developing colonized world. For example, Africa and Asia's struggles for independence and their post-war decolonization movements, which emphasized self-determination, reflected this Western imperative. In colonized nations, colonial domination and racism encompassed a wide range of human rights violations, justifying international concern.¹⁸ For colonized nations, the appreciation of human rights, therefore, was linked to their struggle for emancipation. The Universal Declaration vindicated their aspiration for such an appreciation for human rights. The Universal Declaration, however, tended to protect nations rather than individuals. Faced with the stark reality of poverty and underdevelopment, there were compelling reasons to conceptualize human rights in concrete and physical terms meaningful to the vast majority of the poor. This was reflected in the Declaration on the Right to Development and in due course led to what are now described as

17. See Introduction by Paul Ricoeur in UNESCO and the International Institute of Philosophy, *PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS*, 1986. This, we shall see, is precisely one of its most fundamental weaknesses, and perhaps one of the well-springs of the clashing perceptions of human rights that we now witness routinely in the international arena.

18. President Nyerere, at the Commemorative meeting of the twenty-fifth Anniversary of the United Nations, said:

the United Nations has to act against the forces of racialism and colonialism. For these represent the kind of tyranny and oppression which deny all hope to new, and which force them to express their humanity through violence. A man can change his religion if he wishes; he can accept a different political belief But no man can change his color or his race. And if he suffers because of it he must either become less than a man or he must fight.

U.N. Doc. A/P.V. (1970).

'third generation' rights.¹⁹

Communism and the Cold War shaped the human rights agenda in two ways. First, until the demise of Communism, which began in the late 1980s, the human rights debate was fought largely along East-West lines as a facet of the Cold War.²⁰ Second, Communism claimed to offer an alternative vision of human rights, founded on the primacy of the collective over the individual. This alternative was conditioned by social, historical, national, and cultural contexts and characteristics of the people in question.²¹

The nations responsible for creating and signing the major human rights documents now existing heavily negotiated their terms before finalizing the treaties. Each of them carry the imprint of the biases, philosophies, and underpinnings of the various cultures involved. The ICCPR best reflects the Western conception.²² The ICESCR best reflects the Socialist conception.²³ The Declaration on the Right to Development best reflects the perceptions of the developing countries.²⁴

19. The Declaration on the Right to Development, G.A. Res. 41/128 U.N. GAOR 41st Sess., Supp. No. 53 at 186, U.N. Doc. A141/53 (1986).

20. Louis Henkin, *An International Human Rights Agenda for the End of the Century: New Human Rights?*, American Society for International Law Proc. 420 (1994). "During the Cold War, human rights were universally acclaimed, in part because in the ideological struggle, both sides wished to appear as champions of human rights." *Id.*

21. Ricoeur, *supra* note 17, at 420; see also V.D. Kudryavtsev, *Human Rights and Soviet Constitution*, in Ricoeur, *supra* note 17 (stating that 'collective' itself has at least two dimensions including political, which views State as expression of collective, and societal, or any of its social units defined as sharing collective identity such as family, ethnicity, language, religion, or religious denomination).

22. Myers MacDougal et al., HUMAN RIGHTS AND WORLD PUBLIC ORDER 1980.

23. Gregory I. Tunkin, THEORY OF INTERNATIONAL LAW 1973.

24. GA Res 41/128 of December 4, 1986. Article 1 (1) states, "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized." *Id.* art. 1.

The developing countries now focus on the Working Group of the Commission on Human Rights, that was established in 1993 in order to identify obstacles to the implementation and realization of the Declaration and to recommend ways of enabling all States to give effect to the right to development. Doc. E/CN.4/1995/11. Over the past years, the Working Group identified certain obstacles to implementation, including unilateral coercive measures and conditions, including such measures and conditions that specifically arose in the context of increasing economic globalization. Examples of such conditions are the required allocation of adequate financial resources, debt repayment, structural adjustment programs, and deterioration in trade terms. United Nations, THE UNITED NATIONS AND HUMAN RIGHTS 1945-1995 757.

II. THEMATIC EVOLUTION AND DISTINCTIONS IN THE VARIOUS HUMAN RIGHTS TREATIES

The evolution of the conception and practice of human rights has been institutional as well as thematic. Thematically, there are significant developments and differences between the Universal Declaration and its 1996 Covenants, between the 1996 Covenants themselves, and between the 1996 Covenants and subsequent Conventions such as the International Convention of the Elimination of All Forms of Racial Discrimination²⁵ ("CERD"), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women²⁶ ("CEDAW"), and the United Nations Convention on the Rights of the Child ("CRC").²⁷

The nature of the Universal Declaration is different from that of the 1996 Covenants. It has been argued that the text was merely a declaration, as opposed to an agreement between contracting parties.²⁸ It was more a statement on the nature of man that proclaimed or recognized a universal concept of humanity based on the ideas of reason, conscience, and freedom. The 1996 Covenants, on the other hand, are agreements between contracting parties that promote the rights listed in them and carry express legal obligations. The difference between the two marks a shift from abstract protection of human rights to more specific provisions providing concrete protections.

A second development was the addition of economic, cul-

25. International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly on Dec. 21, 1965 (entered into force Jan. 4, 1969 for the United Nations, G.A. Res. 1904, U.N. GAOR, 18th Sess., Supp. No. 15, at 35, U.N. Doc. A/5515 (1963)), reprinted in 5 I.L.M. 352 (1966). See Thodor Meron, *The Meaning and Reach of the International Convention of the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT'L L. 283, 283-84 (1985) (discussing convention as important general instrument requiring observance of human rights and fundamental freedoms for all, without regard to race).

26. United Nations: Convention on the Elimination of All Forms of Discrimination Against Women, U.N. GAOR, 48th Sess., Supp. No.38, at 1,2, U.N. Doc. A/47/38 (1993), reprinted in 35 I.L.M. 487 (1996). The U.N. General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women on December 18, 1979, and it entered into force on September 3, 1981.

27. United Nations: Convention on the Rights of the Child, U.N. Doc. A/Res/44/25 (1989) reprinted in 28 I.L.M. 1448 (1989). The Convention on the Rights of the Child entered into force on November 20, 1989.

28. Alwin Diemer, *The 1948 Declaration: An Analysis of Meanings in Ricoeur*, *supra* note 17.

tural, and social rights to the ICESCR. These rights include the right to work, the right of equal education, and the right to reliable information.²⁹ Inherent in these rights are concepts of such civil rights as freedom of speech, freedom of association, freedom of religious expression, and the right to legal remedies. The subject of the two 1996 Covenants is open to conflicting interpretations. Some assert that economic, cultural, and social rights, although aimed at groups and collectivities, apply to individuals. Others assert that these rights embody social goals, and by extension, form the legitimate object of state policy.

A crucial distinction between the two 1996 Covenants is the manner in which the rights included in them could be exercised and enforced. The ICCPR called for non-interference and protection,³⁰ thus imposing both positive and negative obligations on the States. The implementation of such positive and negative rights depended on active social agencies. The relationship between the individual and society, implicit in such a conception of social action, is different from the theory of an individual's sovereignty or power of self-determination and initiative. Put differently, the notion of rights is broadened to include the possibility of development, or the achievement of social goals. Later conventions exhibited a mix of both of these characteristics. While the CERD and the later Committee Against Torture³¹ ("CAT") include either the possibility of development or the achievement of social goals, the CEDAW and the CRC asserted a combination of both negative and positive obligations, the protective, and the developmental.

The tension between the classical conception of human rights founded on individual freedoms and rights asserted in the ICCPR, the notion of rights rooted in social goals reflected in the ICESCR, and the notion of rights as linked to the historical disparity in the levels of development between the developed and the developing world as reflected in the Right to Development,³² continues to resonate in the human rights debate today. Cold war politics inhibited the predominance of one conception over the other to a considerable extent. The demise of the So-

29. See ICESCR *supra* note 9 (listing economic, cultural, and social rights protected).

30. See ICCPR, *supra* note 8.

31. United Nations: Committee Against Torture, 23 I.L.M. 1027 (1984).

32. See Declaration on the Right to Development, *supra* note 10.

viet Union and international Communism liberated human rights from a certain type of geopolitical captivity. However, a North-South divide now threatens to replace the older East-West tension.

A. *Philosophical Contradictions*

There are two axes to this debate. The first is the contradiction between the individual good and the social good. The second is the contradiction between inherent or natural rights and the potential to develop. These tensions are not true contradictions. Additionally, such tensions are not strictly limited to debates between the East and the West or the North and the South. The whole idea of a right to freedom that has to be attained rather than an originally, possessed, protected, and preserved right is an idea common to philosophers from Immanuel Kant to John Stuart Mill, Georg Wilhelm, Friedrich Hegel, and Karl Marx. In fact, developing countries today are struggling to attain the human rights recognized by these philosophers. Human rights have two facets, the protective and the liberating. The Western discourse is predicated heavily on the protective dimension. To some extent, this reflects the gains and achievements of the advanced industrialized world. Developing countries, on the other hand, must rely on the hope that their circumstances as a whole can change for the better. Their focus is therefore on human rights as a vehicle for liberation from poverty and under-development, which they see as the major factors inhibiting their full realization of human rights.

B. *India's Compromise*

As far as India is concerned, there is no contradiction between the individual and the social good and natural rights and development. India's Constitution guarantees all human rights and fundamental freedoms as conceptualized in the Universal Declaration, and recognizes certain unalienable rights that are inherent to the concept of the dignity of man. At the same time, human rights are not limited to the protective aspect. It includes the notion that a man must have the space and the means to achieve freedom. Both democracy and development contribute to human rights in that they promote freedom of thought, action, and existence. In the politicized discourse on human

rights in the U.N. human rights fora, the development argument is portrayed as an excuse to justify political repression or human rights violations for the greater good of society. While this may be true in some instances there are also instances in which the West has sided with such policies rather than opposed them. To generalize from singular instances would be unwarranted and unjustified. Similarly, attempts to promote civil and political rights in countries that blatantly violate such rights should not be uniformly portrayed as political interference.

Institutionally, the U.N. Charter organs and inter-governmental processes exemplified by the Commission on Human Rights have been buttressed by the evolution of new treaty-based, legal bodies such as those governed by international covenants and conventions. The key feature in this development has been the evolution of a host of inter-governmental and treaty-based mechanisms that are dominated by experts, and which have been given an increasingly extensive role. The World Conference on Human Rights³³ established the Office of the High Commissioner for Human Rights.³⁴ While the Office of the High Commissioner still remains a curious hybrid, reflecting the tensions and compromises in defining its precise role between that of an independent office and an inter-governmental institution, there is a clear effort to give the office an independent character. Similarly, the U.N. Security Council has, in recent years, played a role in human rights through specific peace-keeping operations. Recent international human rights violations have given fresh impetus to the establishment of new institutions on the frontiers of humanitarian and human rights law, in particular, the International Tribunal in former Yugoslavia and in Rwanda,³⁵ and the negotiations under way for the establishment of an International Criminal Court.

33. See Report of the World Conference on Human Rights, *supra* note 11.

34. GA Resolution 48/141, 33 I.L.M. 303 (1993). The United Nations adopted Resolution 48/141 on Dec. 20, 1993 without a vote. Jose Ayala Lasso, the Ecuadorian Ambassador to the United Nations, was the first U.N. High Commissioner for Human Rights.

35. Yugoslavia Tribunal, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., paras. 3-4, U.N. DOC S/RES/827 (1993); Rwanda Tribunal, S.C. Res. 995, U.N. SCOR, 49th Sess., 3453rd mtg. para 4, U.N. DOC S/RES/995 (1994).

III. INDIA'S POSITION ON THE IMPORTANCE OF HUMAN RIGHTS

India is a nation that took the lead fifty years ago to embrace human rights both in the U.N. Charter and in India's own Constitution. Its people are justifiably proud of their social and philosophical tradition of humanism and universalism based on non-violence, tolerance, pluralism, coexistence, and the individual pursuit of truth. These values are rooted in its civilization and manifested in national figures such as Lord Buddha, Emperor Akbar, Rabindranath Tagore, and Mahatma Gandhi. India has demonstrated its commitment to democracy and the development of human rights in all parts of the world. Significantly, India's commitment to human rights preceded the Universal Declaration by anticipating the 1996 Covenants and proclaiming and guaranteeing basic human rights and fundamental freedoms for all citizens, irrespective of caste, creed, race, religion, or sex.

India's interpretation of the duties and obligations of states under the 1996 Covenants is that each state must strive to recognize and give effect to the various rights and duties embodied in the 1996 Covenants through the best avenues available to it. India recognizes that a country's size, population, social structure, and political environment can effect the assurance of such rights. Furthermore, India embraces cultural differences, and supports the ideal that every faction in society, irrespective of ethnic origin, color, caste, sex, or religious belief, should be able to enjoy protected human rights. India also perceives it as a duty of the State to promote awareness of rights among its own people and to provide adequate and effective machinery to ensure observance of such rights.

India fully recognizes, consistent with what is stated in the preamble of its Constitution, that every individual has a duty to other individuals and to the community to observe the rights recognized therein and to take preventive measures to ensure that the community as a whole is not deprived of enjoyment of its rights at the hands of individuals or groups of individuals. This duty is particularly important considering the increase in acts of terrorism and other disruptive activities. India firmly believes that a country's overall performance and its resolve to

translate into reality the enjoyment of rights by its people is of paramount importance.

IV. *EVALUATION OF THE PRESENT SITUATION*

The end of the Cold War rekindled hopes for a new world order founded on the principles of cooperation, equality, and mutual understanding. The adoption of the Vienna Declaration and Programme of Action³⁶ ("Vienna Declaration") was a watershed in consensus building in the field of human rights because it reaffirmed the universal nature of human rights and fundamental freedoms for all.³⁷ The Vienna Declaration noted that

36. United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action, June 25, 1993, 32 I.L.M. 1661 [hereinafter Vienna Declaration].

37. The debate between the universal nature and the particular nature of human rights has been a particularly contentious one. Louis Henkin considered that at the Vienna Conference on Human Rights, there emerged a fundamental challenge to the Universality of Human Rights. The challenge to universality . . . is a challenge to the very idea of human rights. But the challengers did not wish to say that, so they said, Yes, of course human rights are very important, but one has to see them differently in different cultures and in different contexts, and so forth, and what some people think as human rights may not be what we think are human rights. Alongside this banner of cultural revolution floated another banner, sovereignty . . . so, we have a combination of these ideas, challenging . . . the basic assumptions we thought had been established in 1945. We knew that the Cold War hid them a little bit, but we thought we would not have to address again the question.

Supra note 20, at 420-21.

On the other hand, the Singapore Permanent Representative to the U.N., Ambassador Bilahari Kausikan, posed the question of whether there can be a distinctively Asian approach to human rights in an address, *An Asian Approach to Human Rights*. His reply was that:

[a]t one level the answer logically must be negative if human rights are rights everyone has simply as a human being. Yet cultural diversity is also real. As a matter of empirical record, rights, order and justice are obtained in diverse ways in different countries at different times. Japan and India are two Asian countries that profess adherence to democracy and human rights in terms almost indistinguishable from the West. Nevertheless, there are great differences in the way rights are conceived and laws implemented in Japan and India, and between those countries and the West; differences that can be attributed to culture and level of development.

Id. He also added that:

[u]niversality is not uniformity. The extent and exercise of rights and freedoms must necessarily vary from one culture or political community to another, and over time, because they are the products of historical experience of particular peoples. Many Asian societies are more group-oriented and accept a wider sphere of governmental responsibility and intervention than is common elsewhere. But societal differences are a reality even within the West.

the promotion and protection of all human rights and fundamental freedoms must be a U.N. priority in accordance with U.N. purposes and principles, in particular the U.N. goal of international cooperation. In promoting this goal, the protection of all human rights is a legitimate concern of the international community.³⁸ Most significantly, the Vienna Declaration stated that all human rights are universal, indivisible, interdependent, and interrelated. It emphasizes that the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.³⁹ The Vienna Declaration also promotes the observance of such rights in a "just and balanced manner."⁴⁰ India welcomed the Vienna Declaration as a positive step forward in international cooperation for the protection and promotion of human rights.

A. *Challenges to Overcome*

Unfortunately, the hopes of a new international standard of human rights based on a more holistic and cooperative approach, rather than a confrontational and political approach, are being hindered once again. In an earlier phase, the international human rights agenda was cast as an East-West battle. The human rights agenda in the post Cold War phase, however, has shown an increasing tendency of being cast in a North-South perspective in which human rights appears to be a duty to be exacted from the developing world. In some ways, this tendency betrays the missionary spirit that characterized the early years of colonialism. Double standards, selectivity, politicization, self-

The United States has no state-sponsored church or religion. Many European countries do.

Bilahari Kausiakhn, *An Asian Approach to Human Rights*, 82 ASIL Proc. 70 at 146-47 (1995). Cristina M. Cerna of Organization of American States felt that "[t]he absence of a regional political umbrella organization in Asia like the Council of Europe, the Organization of African Unity or the Organization of American States complicates the process of establishing a regional human rights arrangement for Asia." Christine M. Cerna, *East Asian Approaches to Human Rights*, 82 ASIL Proc. 70 at 157 (1995). See also, Michael C. Davis, *Chinese Perspectives on the Bangkok Declaration and the Development of Human Rights in Asia* 157-164. On human rights in Africa see Gwendolyn Mikell, *African Women's Rights in the Conflict of Systemic Conflict*, 82 ASIL Proc. at 490-500. See also Henry J. Richardson III, *African Regional Integration and Human Rights: Potential Problems* 500-506.

38. Vienna Declaration, *supra* note 36.

39. *Id.*

40. *Id.* at 1662.

righteousness, and partial approaches towards the observation of human rights rekindled a North-South divide. This was accompanied by assertions of a dubious moral superiority, insinuations of 'bad faith' on the part of others, and misuse of political pressure against the developing world. These tendencies, as well as the apparent appropriation of human rights discourse by the West, have affected the credibility of the human rights agenda among many developing countries. For the most part, critics of the U.N. human rights agenda focus on the Western influence on such agenda. Essentially, this criticism proceeds along two lines. The first line questions the human rights credentials of the West itself and its position as champion of human rights. The second line of criticism analyzes the distortions and flaws inherent in the system and the forms it takes in the conduct of international relations. Similarly, there are criticisms of developing countries for their lack of emphasis on civil and political rights.

1. Critics of the Western Agenda

Critics of this Western approach cite the lack of historical perspective, the denial of the existence of human rights concerns in Western societies, and Western blindness to the continuing marginalization and exclusion of, and discrimination against, large sections of their own societies. Such recognition could put both Western human rights records and the human rights records of the developing world in perspective. Western countries presume that civil and political rights are better guaranteed in their own countries than in developing countries. The failure of the West to recognize problems with human rights protection in their own societies, as well as in the developing world, has manifested itself in many forms. The civil and political rights of large sections of people in the North, however, are circumscribed by visible and invisible barriers that prevent their full participation in the political and social activities of life. There are countries in the developing world that have practiced and safeguarded democracy under much more difficult circumstances than the nations that stand for such principles today. The phenomena of racism, xenophobia, and related intolerance have marginalized and excluded large sections of societies. For example, this marginalization has affected indigenous people and migrants, sometimes to a point of effective disenfranchise-

ment, disqualification from social welfare support, and unequal capacity to compete in political and economic life. This, in turn, often leads to situations of alienation and despair. Discrimination based on color, race, and religion is still prevalent. Gender discrimination exists. Sexual harassment in the workplace is something that is increasingly coming to light. There is a deliberate refusal to look at human rights in a historical, developmental, and evolutionary framework. In this is a reluctance to relate modern day prosperity in the developed world to the large-scale human rights violations of the past such as colonialism, the decimation of indigenous populations, or the exploitative condition of workers during the industrial revolution in the West. In order to be effective advocates of human rights, the West could profit from an honest acknowledgment of its past and a greater awareness of the history of human rights in the developing world.

Another frequent criticism of the Western approach relates to a widespread perception that Western approaches to human rights is thematic, country-specific, selective, and self-serving. The principles of "universality, indivisibility, inter-dependence, and inter-relatedness,"⁴¹ so central to the Vienna Declaration, are not used in the holistic sense in which they were conceptualized. They are used, rather, to accentuate particular human rights concerns over others.

2. Critics of Developing Countries' Agendas

Developing countries are accused of emphasizing economic or developmental rights at the expense of civil and political rights, however, no such prioritization has been intended. Instead, what is sought to be emphasized is the strategic importance of the right to development within the context of the inter-relatedness of all human rights. To many developing countries, the distortion of the right to development appears to be a deliberate and cynical attempt to decline responsibility for poverty and underdevelopment, and to evade the liabilities that attach to human rights violations.

There is a tendency to confuse symptoms of underdevelopment with human rights violations. There has been a reluctance to address the causes of such underdevelopment through structural reforms at a global level, such as strengthening financial

41. *Id.* at 1665.

flows, encouraging technology transfer, and allowing developing countries to gain trade access to the Westernized world. There has been a tendency to treat more grave and deliberate violations of human rights, such as the violation of children's rights that occur in child pornography, prostitution, and child sex tourism, as phenomena of the market while targeting child labor in developing countries as if governments condoned such activities.

Current approaches to human rights also betray an over-reliance on legal and political approaches that have resulted in an excessively litigious and polemical human rights discourse that is antithetical to cooperative international consensus-building. From this viewpoint, lawyers and diplomats have assumed the role of high priests of human rights. Alternative approaches to human rights, such as approaches building upon spiritual and ethical traditions, have not been adequately explored. Mahatma Gandhi and Mother Teresa, who both emphasized charity, personal example, and faith in God, may have done more for human rights than any international organization.

B. *Suggestions to End the Debate*

The notion of human rights and fundamental freedoms founded on individualism has always generated debate on the limits of individual autonomy and freedom in relation to society. Just as the emergence of anarchic situations in states and their terrible humanitarian consequences have forced a rethinking of the concept of absolute sovereignty of nations, many modern philosophers believe that the complexities of life in a globalized world require a re-examination of absolutism of individual rights. The Intellectual Revolution and the Age of Enlightenment in Europe, which asserted the philosophy of individual rights, were a product of a world that acknowledged moral values. As individualism became sovereign and societies became polarized in the twentieth century, social obligations were whittled away by claims of personal autonomy and individual rights. What once were covenants have dwindled into mere contracts.⁴² Liberalism degenerated into modern libertarianism or license.⁴³

42. Christian Tyler, "Why 'Rights' Can Be Wrong," *FIN. TIMES*, Mar. 29, 1997, at 5.

43. JONATHAN SACKS, *THE POLITICS OF HOPE* (1997) (defining liberalism as toleration of diverse cultures and beliefs under common societal creed).

This degeneration has rekindled the debate on individual rights versus social rights.

Increased dogma, characteristic of a narrow religious practice with an essentially behaviorist underpinning, has further aggravated the current human rights discourse. This discourse is not helped by blind allegiance and missionary attitudes more typical of a colonial past. Human rights violations are not simply a matter of discipline and behavior that can be rectified by more punitive monitoring. Human rights are a function of conditions, circumstances, and environment. While not underplaying the need for monitoring and punitive mechanisms, a more comprehensive approach would equally address the environment that creates the conditions in which human beings encounter human rights violations.

Finally, society must guard against the misuse and the adverse effects of politically motivated human rights activism. In many multi-ethnic and multi-religious societies, the social fabric of co-existence and conviviality has been built up slowly and patiently over centuries. Due care must be taken when pursuing the legitimate promotion of human rights in such situations in order not to disturb or disrupt the delicate balance built up over generations, often through unconscious processes that are impossible to recreate. The pursuit of the politics of confrontation, separation, and exclusivity through aggressive, militant, or terrorist methods has, as numerous examples from the post Cold War era show, resulted in social disruption and destabilization that provide a breeding ground for conflict and human rights violations causing far greater suffering and loss of life.

A regrettable consequence of this wholly avoidable confrontation has been the continuing violation of human rights in a number of undemocratic or authoritarian countries. Several of these countries have been emboldened to defy their obligations in order to promote and protect civil and political rights for their countries. They do this by portraying genuine international concern as invidious attempts at interference in internal affairs. It is essential to divorce politics from human rights and to seek a larger consensus if we are to promote civil and political rights in these harsh regimes.

C. The Answer: Common Respect and Community Efforts

If current approaches to human rights are defective and counter productive, what kind of approach does India advocate? The principles for a balanced and comprehensive promotion of human rights should be through the strengthening of democracy and the rule of law, the pursuit of development, the promotion of tolerance and respect for pluralism and diversity, and a morally-anchored respect for life. There is a need to look critically at existing approaches and instruments that have relied excessively on the spotlighting approach that has created questionable results. Countries should instead explore the efficacy of less confrontational strategies, such as the setting up of national human rights institutions, human rights education programs, and international cooperation through technical and advisory services. National human rights institutions would be able to address human rights issues without treading on controversial subjects like sovereignty. They would be more efficient in many circumstances. If common goals are to be achieved, we must promote cooperation, build trust and confidence in the fairness and impartiality of human rights institutions amongst nations, and discourage confrontation, self-serving criticism, and the politicization of human rights.

India believes that democracy, tolerance, and pluralism are the best guarantees for the full realization of human rights. It is through democracy that individual and collective rights are best reconciled. At the same time, it must be recognized that while democracy provides the best political framework to safeguard human rights, efforts to ensure the social and economic rights of people are also essential to enable people to live a life of dignity. Development is imperative in order to achieve the fullest democratization. The right to food, shelter, and clothing is as important as the right to vote. During the negotiations of the United Nations, Madame Eleanor Roosevelt spoke of the "freedom from want, as a fundamental human right." Development expands the space for a fuller enjoyment of human rights. Conversely, lack of development is a fundamental constraint to human rights fulfillment. The preamble of the U.N. Charter speaks of promoting both social progress and better standards of life. This is one of India's goals.

In this context, we place great emphasis on the relationship

between development, democracy, and human rights. We view the three as a triad in which each is dependent on the other and each encapsulates the other. While development may not be a sufficient condition for the full enjoyment of human rights, it is an enabling condition. We take pride in the fact that in India, despite the challenges of poverty, under-development, over-population, and religious, linguistic, and cultural diversity, we have pursued democracy and development. This is an experiment in democracy and development larger than that undertaken by any other country. The major projects of nation-building in India include the struggle against poverty, the elimination of caste and gender-based discrimination, exclusion, and marginalization, the empowerment of lower classes and women through affirmative action, and the protection of religious, linguistic, or tribal minorities. These are human rights projects of a scale that transcend the conventional understanding of human rights to be characterized as social development projects. The challenges inherent in an endeavor of such magnitude should not be underestimated. It is equally important that problems that arise are seen in perspective, taking into account the remedial mechanisms that are gradually built into democratic systems.

Despite the triad of democracy, development, and human rights, the development leg of this triad remains the weakest. If India is serious about this triad, then development must have an equal place in the scheme of human rights, and must underpin the work of the United Nations in the sphere of human rights on the same level as democracy. There will remain a structural gap between the North and South that perpetuates conditions of under-development until a time when the locus of the right to development must reside at the international level. Accordingly, further concrete steps must be taken to create a more favorable international economic environment for developing countries.

The international human rights discourse has been vitiated by false contradictions between the universal and the particular, between the individual and the state, and between the natural and developmental concepts of human rights by both those who violate and those who protect human rights. Both groups have targeted each other by overlooking the fact that for the large majority of countries and peoples, many of these paradoxes are irrelevant. There is a dire need to restore a sense of objectivity, proportion, and balance in the promotion and protection of

human rights. Nothing can harm the human rights cause more than its use for partisan or propaganda purposes. As long as human rights are used in conjunction with political power, there will be a perception that it is being used as instruments of pressure, domination, or assertion of superiority of one kind or the other. Accordingly, there will be a resistance to such perceptions.

There is a compelling case to broaden and truly universalize the basis on which international human rights philosophy and the international human rights regime was founded. The philosophical infrastructure of human rights remains rooted too narrowly in post-reformation secular European thought, where polarities of the individual and the state are, in today's context, partial. Its language is overly litigious, but its universality is projected as a moral imperative. It is a cramped morality founded on individualism, utilitarianism, and law. It is a morality deprived of the moral dimension provided by religion and spirituality. It is a morality of contract as opposed to a morality of spirit and conscience.

In most non-Western traditions, ethics are intimately tied to indigenous spiritual and religious traditions. Some of the most striking absences in current human rights philosophy are the absence of an ethical dimension derived from religion as a guide to human conduct and the absence of moral traditions in such discourse. In a sense, this is not surprising, considering the separation of church and state and the secularization of politics and law. It deprives human rights of one of the most powerful codes behind human conduct. It is true that this is likely to be cast in the language of duties, which tends to be particularly well developed in patriarchal societies. The Western mind is conditioned by the duality of the individual versus the State. It is only in specific instances, however, that the language of duties is oriented to the State. Much more commonly, it is oriented towards society as a whole or specific societal units such as the family, clan, or community.

Therein lies yet another missing pillar in the structure of human rights. At a time when the role of the state has shrunk considerably, and many kinds of non-state actors are playing greater roles in the lives of people, there is a palpable need to overcome the individual-state polarity and include the notion of society or community. At the same time, it is important to hold

non-state actors accountable for violations of human rights. Recent developments show a grudging acknowledgment that terrorism does indeed constitute a violation of human rights,⁴⁴ while NGO and media campaigns against the predatory activities of multinationals, such as those involving Union Carbide for the Bhopal gas leak, indicate the dawning of a need to bring big corporations within the scope of human rights as well.

Moreover, there is a need to broaden the base of the human rights pyramid by starting with the eradication of poverty, and to acknowledge the link between social and economic development and human rights. Similarly, countries must cooperate and promote international efforts towards greater human rights development in third world countries. Most importantly, all countries must take responsibility for human rights activism and strive to eliminate human rights violations, not only in developing countries, but also in Westernized countries.

CONCLUSION

In conclusion, it may be pertinent to recall the observation of Dag Hammarskjöld that

[t]he conflict between different approaches to the liberty of man and mind or between different views of human dignity and right of the individual is continuous. The deciding line goes within ourselves, within our own peoples, and also with other nations. It does not coincide with any political or geographical boundaries. The ultimate fight is one between the human and the sub-human. We are on dangerous ground if we believe that any individual, any nation, or any ideology has

44. The Declaration on Measures to Eliminate International Terrorism, GA Res. / 49/60, annexm UN GAOR, 49th Sess., Supp. No. 49, Vol. 1, at 303, UN Doc. A/49/49 (1995), signed on Dec. 9, 1994. The Declaration states clearly that "states Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States." *Id.*; *see also* Draft Resolution on Measures to Eliminate International Terrorism, § III, ¶ 9, GA Res. 51/210, UN GAOR, 51st Sess., Supp. No. 49, Vol. 1, at 346, UN Doc A/51/49 (1996). This resolution established an Ad hoc Committee to draw (1) a Convention on Terrorist Bombings; (2) thereafter, a Convention on nuclear Terrorism, and (3) then a Comprehensive Convention on Terrorism. The Ad hoc Committee commenced its work in the first session in March 1997 on the draft Convention on Terrorist Bombings, submitted by G-7 and Russia.

a monopoly on rightness, liberty, and human dignity.⁴⁵

45. Four Public Papers of the Secretaries-General Dag Hammarskjöld, 1958-60, at 90 (available in U.N. Library).