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The Universality of Human Rights and the UN Human Rights Agenda: The Impact of the Shift of Power to the East and the Resurgence of the BRICS

Surya P. Subedi*

Abstract

A dominant common perception is that the UN agenda of human rights is of Western origin and that such Western countries deploy their intellectual capital and financial power to support human rights worldwide. There is fear that the perceived economic and corresponding potential political decline of the West will have a detrimental impact on the international human rights agenda. This article examines whether the UN human rights agenda is still a Western agenda? What do we mean by the ‘West’? What is the basis of the claim of the universality of human rights? What are the challenges and opportunities offered to the UN human rights agenda by the rise of multi-polarism or the resurgence of the BRICS countries in general and China and India in particular? This article argues that the resurgence of the BRICS countries in general and China in particular is likely to diminish the policing role of the West, but not undermine the essence of the ethos that lay behind the UN human rights agenda. The impetus to continue to promote the value of human rights everywhere is in principle secure but making the protection of human rights a reality for hundreds of millions of people depends on the reform of the UN’s human rights system.

Key Words: Universal Human Rights, Asian values, India, China, Western values, the rule of law, democracy, resurgence of the BRICS.

1. Introduction

There is a perception on the part of many that the UN agenda of human rights is of Western origin and is supported by Western countries deploying their intellectual capital and financial power. There is fear that the perceived economic and corresponding potential political decline of the West will have a detrimental impact on the international human rights agenda in general and the UN agenda in particular. This is because there is an apprehension that a loss of economic power by Western countries may prompt a refocus of the priorities of the Western world with a corresponding move away from the global promotion and protection of human rights. Similarly, there is a tendency to see the resurgence of the BRICS¹ countries

* Surya P Subedi, O.B.E., is Professor of International Law at the University of Leeds. He was the UN Special Rapporteur for Human Rights in Cambodia between 2009 and 2015 and the nominee of the Government of Nepal for appointment to the position of the UN High Commissioner for Human Rights in 2014. He also served for five years (2010-2015) as a member of a high-level Advisory Group on Human Rights to the British Foreign Secretary. Professor Subedi has worked as a legal advisor to the Ministry of Foreign Affairs of Nepal and represented the country in the UN General Assembly. He was elected to the Institut de Droit International in 2011, is a founding editor of the Asian Journal of International Law published by Cambridge University Press and Editor of a monographs series in ‘Human Rights and International Law’ published by Routledge. He was made an OBE for services to international law in 2004. He holds a DPhil in Law from the University of Oxford, an LLM with Distinction from the University of Hull and an LLB and an MA from Tribhuvan University, Kathmandu, Nepal. He wishes to thank the anonymous reviewers of this article for their constructive comments. He also wishes to acknowledge the research assistance rendered to him by YI (Henderik) Tan of the University of Leeds in writing this article.

¹ Brazil, Russia, India, China and South Africa, the term coined just over 10 years ago by Jim O’Neill, former Chief Economist for Goldman Sachs.

(and the MINT countries as well²), in particular a Communist China, and the emergence of a multi-polar world as a threat rather than as an opportunity to the UN agenda of human rights. There is a concern expressed in certain quarters that the economic rise of China may result in an eventual restructuring of the global political order and institutions in favour of China. In this vein, a great deal has been written about the possible impact on the rest of the world of the economic rise of China.³

Indeed, there is some measure of truth in this perception: as China's influence has grown, the Western world has lost some of its appeal as a role model for the rest of the world. This is because it is perceived that democracy did well in the 20th century under American leadership prompting other countries to seek to emulate the successful global hegemonic country in many respects, including its democratic or even presidential system of governance. However, there is claim of a new dawn and that the 21st century will be dominated by Asian countries.

Therefore, this article aims to examine whether the UN human rights agenda is still a Western agenda? What do we mean by the 'West'? What is the basis of the claim of the universality of human rights? What are the challenges and opportunities offered to the UN human rights agenda by the rise of multi-polarism or the resurgence of the BRICS countries in general and China and India in particular? It also considers what the future for the UN human rights system would be in the multi-polar world, and whether the present UN human rights mechanisms would be able to deal with the challenges posed by the emergence of a multi-polar world, and importantly, if not, what changes should be introduced to the UN system of human rights. In doing so, it begins by examining the place and role of human rights in the contemporary world and introduces by way of general overview some of the key challenges and themes pertinent to the operation of the United Nations human rights project in the current century.

2. Consensus on the universality of human rights

To begin with, all States, including China, Russia, Iran, Saudi Arabia and Cuba have accepted the UN agenda of human rights and have agreed to work with the system. They have voluntarily subjected themselves to have their record of human rights scrutinised by the UN Human Rights Council. The Universal Declaration of Human Rights (UDHR) itself was adopted unanimously by the UN General Assembly in 1948. Of course, there was a small group of States which abstained in the adoption of the UDHR in 1948, but by the time the last century came to a close all States accepted the human rights norms promoted by the UN. For instance, through the World Summit Outcome⁴ document of 2005, which was endorsed by all States, the Heads of State and Government of member States of the UN stated the following,

² There have been recent predictions that future economic might lies in the hands of the MINT countries, Mexico, Indonesia, Nigeria and Turkey, for example, see J O'Neill's latest prediction, as reported by the BBC, The MINT Countries: Next Economic Giants?, BBC News Magazine, (6 January 2014) previous predictions have related to the CIVETS (Colombia, Indonesia, Vietnam, Egypt and Turkey), LElliott, Mint Condition: Countries Tipped as the Next Economic Powerhouses, The Guardian, (9 January 2014).

³ See generally, J Fenby, Will China Dominate the 21st Century? (Polity Press, Cambridge, 2014); D Shambaugh, China Goes Global: The Partial Power (OUP, NY, 2013); T Beardson, *Stumbling Giant: The Threat to China's Future* (Yale Univ Press, New Haven, 2013); M Jacques, When China Rules the World: The Rise of the Middle Kingdom and the End of the Western World (Allen Lane, London, 2009).

⁴ Adopted by the UNGA at its 16th Session, A/RES/60/1 (24 October 2005).

recommitting themselves to the universality of human rights, promotion of democracy and the rule of law, and acknowledging the importance of the 1948 UDHR⁵:

“119. We recommit ourselves to actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations, and call upon all parts of the United Nations to promote human rights and fundamental freedoms in accordance with their mandates.

120. We reaffirm the solemn commitment of our States to fulfil their obligations to promote universal respect for and the observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter, the Universal Declaration of Human Rights and other instruments relating to human rights and international law. The universal nature of these rights and freedoms is beyond question. (emphasis added and footnotes omitted)”⁶

Similarly, the Heads of State and Government assembled in New York at the turn of the last millennium to issue a historic declaration, the UN Millennium Declaration, resolving to “respect fully and uphold the Universal Declaration of Human Rights.”⁷ Further, all countries, including China and Russia, voted in favour of a resolution of the General Assembly to create the Office of the High Commissioner for Human Rights (OHCHR) in 1993 and a vast majority of States voted in favour of the creation of the Human Rights Council in 2006. The General Assembly resolution to create the Human Rights Council was adopted with 170 votes in favour to 4 against and 3 abstentions.

3. Democracy, the Rule of Law and Human Rights as intertwined global concepts

Human rights values are deeply entrenched in democracy and world leaders have time and again reaffirmed that ‘democracy is a universal value’.⁸ Those States which have not embraced full democracy will one day do so, or will be forced to embrace it by popular demand.⁹ The same is the case with human rights. Of course, there is no universal definition of democracy and many non-Western States may not like the current form of democratic system of governance practised in Western countries. They may very well come up with their own version of democracy more suited to their own domestic conditions. However, they will have to embrace the core values of democracy underpinned by human rights, the rule of law, and the independence of the judiciary. Democracy underpinned by respect for human rights is not only a system of governance, it is a form of culture. Once it is introduced and taken its roots in a society, it remains part of that society even despite the occasional aberrations, or ups and downs in democratic governance in a given country.

Democracy may have its origin in Western political thought, but it now is very much a global concept which has been enriched by similar concepts found in other civilisations and the contribution made to its evolution by the practice of States belonging to different regions, civilisations and faiths. There may not be a universally accepted definition of democracy; it is a living concept which has changed with time. Today’s definition of democracy is

⁵ Universal Declaration of Human Rights (UDHR), Adopted by the UNGA on 10 December 1948, UNGA Res 217A(III).

⁶ Ibid.

⁷ Millennium Declaration, Adopted by the UNGA at its Fifty-fifth session (8 September 2000), UN Doc. A/RES/55/2 [25] <<http://www.un.org/millennium/declaration/ares552e.htm>>.

⁸ UNGA Res, supra note 4 [135].

⁹ The will of many people in Hong Kong is evidence of a growing dissatisfaction with governance that is conducted with little regard to contemporary forms of democracy, Hong Kong’s Democracy Debate, BBC News, China (7 October 2014) <<http://www.bbc.co.uk/news/world-asia-china-27921954>>.

underpinned by the core principles of human rights, which was not the case prior to the inception of the modern human rights agenda. Generally speaking, the building blocks of democracy would, in the contemporary world, include (i) the independence of the judiciary, (ii) the rule of law, (iii) constitutional guarantees of the rights of individuals, including the rights of women and minorities, (iv) a free media, (v) free association, (vi) periodic, free and fair elections, (vii) an army that is within the overall control of an elected government, (viii) strong political parties and a credible opposition, (ix) a proper, rich civil society, and (x) a professional and politically neutral civil service.¹⁰

Similar to democracy and human rights, the content of the rule of law is liable to change with time since it too is an organic principle in itself. The contemporary definition of the rule of law would encompass more than that expounded by A.V. Dicey in his time.¹¹ Today, basic human rights are also deeply entrenched in the notion of the rule of law. Both the notions of human rights and the rule of law seek to protect the individual against the tyranny of the government. The principle of the rule of law requires that the exercise of public authority must be open to some form of judicial scrutiny. Indeed, as stated in a UN report on the rule of law, “establishing respect for the rule of law is fundamental to ...the effective protection of human rights”.¹² Therefore, the rule of law is a fundamental concept that drives much of the work of the UN. The definition of the rule of law may vary in different countries and contexts, but the following definition of the rule of law by the UN serves to capture the essence of it:

For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.¹³

Accordingly, the building blocks of the principle of the rule of law in the contemporary world would include: (i) supremacy of the constitution or constitutional instruments, (ii) independence of the judiciary (iii) legal certainty and transparency, (iv) separation of powers between the legislative, executive and judicial branches of the government and a proper system of checks and balances between them, (v) equality before the law and fairness and non-arbitrariness in the application of the law, (vi) accountability of public institutions and people holding public positions to the law, (vii) accessibility of the law, (viii) equal access to justice, (ix) right to a free and fair trial, (x) adequate protection of fundamental human rights, and (xi) compliance by the state with its obligations in international law.¹⁴

¹⁰ For a more detailed discussion of the rule of law and its constituent parts, see T Bingham, *The Rule of Law* (Penguin, UK, 2011).

¹¹ AV Dicey, *Introduction to the Study of the Law of the Constitution*, 10thedn(Macmillan,London,1959).

¹²Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S2004/616 (23 August 2004)<<http://www.unrol.org/files/2004%20report.pdf>>.

¹³Ibid.

¹⁴The phrase ‘the rule of law’ is used by both politicians and lawyers with some elasticity to its meaning and application. For discussions of the modern definition of the rule of law there are numerous examples, such as, Report of the Secretary General,supra note 12 ; Bingham, supra note 10; E Cotran& M Yamani (eds) *The Rule of Law in the Middle East and the Islamic World: Human Rights and the Judicial Process* (IBTuarus, 2000); F Neumann, *The Rule of Law: Political Theory and the Legal System in Modern Society* (Berg,Leamington Spa, 1986).

By joining the UN, by endorsing the UDHR, by agreeing to the creation of various UN human rights agencies such as the OHCHR and the Human Rights Council, by ratifying human rights treaties and by participating in and cooperating with the activities of the UN human rights agencies, such as the universal periodic review, all members of the UN have already crossed the Rubicon. Therefore, democratic values informed by human rights values and the rule of law should guide and influence the governments around the globe including Russia, China, Saudi Arabia and Iran (countries which have historically been resistant) in the future.

4. Participation of developing countries in advancing the human rights agenda

To claim that human rights are ‘Western’ is an affront to the contribution made by the developing States within Asia and Africa to the making of international human rights law. The current corpus of the international law of human rights may be largely Western in origin, but the human values from which human rights have emanated could be found in all major civilizations of the world. Much of the international law of human rights that is in existence today is very much the result of contribution made by the developing countries of Asia, Africa and Latin American countries, and reflects those countries’ aspirations and wishes with regard to international human rights law. A good example of a human rights treaty providing for some of the most far-reaching provisions adopted with the enthusiastic support of the Asian and African developing countries is the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 which was notably the first human rights treaty to include a provision for individual complaints by creating a committee to entertain individual complaints, to monitor implementation of the Convention and to extend the scope of protection not only in relation to the activities of public organisations but also in relation to the activities of private actors conducted in the public sphere.

Except for the 1948 UDHR most of the other major international human rights treaties were adopted by the UN General Assembly after developing countries gained a numerical majority in the Assembly. Most of the developing countries signed the 1966 Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Many other subsequent ‘hard law’ and ‘soft law’ instruments, such as those relating to the rights of self-determination, minority rights, equality, economic, social and cultural rights and the rights to development, which constitute the bulk of the human rights package, have been adopted either with an enthusiastic participation or actually at the behest of developing countries.

Granted, Western countries were instrumental in seeking to place the human rights agenda on the agenda of the UN, but this agenda is now a common one of all peace and freedom loving states whether Western or non-Western. The International Convention on the Elimination of All Forms of Racial Discrimination has been a catalyst for change in national legislation and policy in many Western countries. This Convention required and inspired the enactment of national race-relations and equality laws in many Western countries. It also is a Convention which allowed States to take affirmative action or take measures of positive discrimination for the advancement of certain racial or ethnic groups of individuals requiring such protection. Many of the innovative provisions of Conventions like this were included to meet the aspirations of developing countries.

Thus, it would be untrue to state that the international law of human rights of today is restricted to being a Western agenda or running counter to Asian or African values. Those very countries of Southeast Asia which once championed the idea of ‘Asian Values’ have

now incorporated the UN human rights agenda into the agenda of ASEAN. There is already an intergovernmental ASEAN Commission on Human Rights and this sub-regional organisation has adopted an ASEAN Human Rights Declaration.¹⁵ Another example is the African Charter on Democracy, Elections and Governance adopted by the Member States of the African Union on 30 January 2007 through which all African States have committed themselves to promoting adherence to the universal values and principles of democracy and respect for human rights.¹⁶

In sum, human rights are truly international and the UN agenda in this regard belongs to all nations, even though Western countries in general and the USA in particular provided leadership in advancing the international agenda of human rights and the UN itself. Indeed, today neither the UN nor human rights are inherently Western or non-Western. Human rights have grown to become the basic global values of the international community. As stated by Onuma, 'current international norms on human rights reflect an agreement of normative ideas between nations. They do not embody the dominant religions or cultural norms of a single nation or group of nations with particular cultures or religions.'¹⁷

5. The claim of the end of history, the clash of civilizations and human rights

A pundit predicted the end of history in the euphoric moments of the early 1990s, stating that since the liberal Western political philosophy had triumphed over Communism the former would remain unopposed; the world got carried away with this idea.¹⁸ History, let alone democratic history and human ingenuity or innovation, will never 'end'. Human history, and with it the ideas of governance and political organisation of societies, will never cease unless and until the human species itself becomes extinct. Human civilisation, including the pursuit and realisation of democratic values, is an evolving process. There will be a continuation of further refinement, change and adaption in democratic ideals to suit the needs or challenges of any given period of time in history, and the world will move on.

Similarly, there have been predictions of a clash of civilisations between the Islamic and non-Islamic world,¹⁹ with this idea gaining momentum in the aftermath of the events of 9/11. Again, there is nothing novel about this idea. Civilisations have clashed throughout human history; people with oppressive tendencies have been in conflict with those with liberated, egalitarian, enlightened and progressive mindsets and this will continue to be so for a long time to come. The idea of 'the West versus the rest' propagated by authors like Samuel Huntington does not hold much weight.

There is a clash within Islamic societies themselves between those with a liberal outlook and values and those with an oppressive mind-set. There is little difference between those with a liberated mind-set in the Islamic world and those with similar attitudes in the Western, Christian or Hindu world. As stated by Mona Siddiqui, a prominent British Muslim academic, 'A true battle is among Muslims themselves – a cultural battle for the soul of the

¹⁵ASEAN Human Rights Declaration (19 November 2012) ff<<http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>>.

¹⁶Article 2-4 of the African Charter on Democracy, Elections and Governance of 30 January 2007 (a copy of the Charter is on file with the present author).

¹⁷Onuma Yasuaki, *A Transcivilizational Perspective on International Law* (MartinusNijhoff, Leiden/Boston, 2010) 450-451.

¹⁸F Fukuyama, *The End of History and the Last Man* (Free Press, NY, 1992).

¹⁹S Huntington, *The Clash of Civilizations and the Remaking of World Order* (Simon & Schuster, NY, 1996).

faith.²⁰ Similarly, there is a clash within China between the supporters of freedom and those who resist reform and change. Therefore, the clash of civilisations is not, and will not necessarily be, between the Islamic or non-Islamic world but between people with authoritarian tendencies and liberal tendencies, between those with autocratic ideas and democratic ideas, or between those with conservative ideas and progressive ideas. People belonging to both camps can be found in all religions and across all civilisations. There are numerous examples of meetings of liberated minds belonging to different religions, Islamic and non-Islamic, Western and non-Western traditions and white, black and Asian backgrounds. After all, of the two worst dictators of the 20th century, Hitler was a Christian and Stalin was not a Muslim.

The Organisation of Islamic Cooperation (OIC), formerly known as the Organisation of the Islamic Conference was established to safeguard the interests of the Muslim world in the spirit of peace. The OIC is moving towards upholding human rights within its 57 member States and has adopted its own Declaration on Human Rights in Islam of 1990 and a human rights Covenant of 2005 and established its own Human Rights Commission (referred to in this chapter as the OIC Human Rights Commission) in 2011.²¹ The Preamble to the Statute of the OIC Human Rights Commission recalls the provisions in the Charter of the OIC and states that the OIC Human Rights Commission ‘shall promote the civil, political, social and economic rights enshrined in the Organisation’s covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values.’

Although various rights of the 1990 Declaration are qualified through limitations by appeal to Shari’a law, according to the rules of interpretation of the Vienna Convention on the Law of Treaties, the principles of customary international law and Article 103 of the Charter of the UN, UN human rights law should prevail over Shari’a law in the event of a conflict in interpretation between the two.²²

It is submitted that the human rights instruments adopted under the auspices of the OIC are rather weak and are liable to give rise to some conflict with UN human rights law in some cases because of the introduction of some elements of relativism. However, the newly established OIC Human Rights Commission has potential as a human rights body. The more Islamic states that become democracies then the more progressive the OIC and its human rights institutions will become.

Similarly, in May 2004, the League of Arab States adopted the Arab Charter on Human Rights ‘to place human rights at the centre of the key national concern of Arab States’ and ‘to entrench the principle that all human rights are universal, indivisible, interdependent and interrelated’.²³ These developments and the democratic revolutions in Egypt, Libya and Tunisia of the recent years forming part of what has commonly been referred to as the Arab Awakening, or the Arab Spring of 2011, are telling in terms of the rejection of the perceived

²⁰M Siddiqui, The “Arabisation” of Islam, *New Statesman*, London (2-8 May 2014) 30.

²¹ See for text of the Statute of the OIC Independent Permanent Human Rights Commission, 50 ILM (2011) 1148.

²² See for a good account of the developments of human rights norms and institutions within OIC, I Cismas, Introductory Note to the Statute of the OIC Independent Permanent Human Rights Commission, 50 ILM(2011) 1148.

²³ See for text of the Arab Charter, 12 Intl Hum Rts Rep (2005) 893. The Arab Charter entered into force on 15 March 2008 after seven Arab states had ratified the Charter. See also, MY Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, 26 *Harvard Hum Rts J* (2013) 91-147.

vision of a clash of civilisations. These all are examples of the triumph of humanism and human rights and the dignity of each and every individual.

6. The West is changing and so are its values

The term ‘West’ conveys different meanings to different people. It is more of a political notion than geographical or racial. It signifies respect for the rule of law, personal liberty and a representative government, even though these ostensibly Western values have been challenged due to government infringement of civil liberties and the monitoring of social media and email traffic.²⁴ There are several other characteristics of ‘the West’, but they are time and country sensitive and are evolving all the time. While Western values were once racist and imperialist, they have sought to become progressive and liberal. It is difficult to define the term ‘the West’ or put all western countries into one category, but having lived and worked on the Continent and in the British Isles, the present author came to the conclusion that Britain is a more liberal society than many other Western societies and more conducive to exercising intellectual and academic freedoms.

With globalisation, the West is changing rapidly and so are its values and people’s perceptions of it. For many people, the idea of ‘the West’ does carry racial connotations. As stated by Siedentop, some are ‘uncomfortable using the term ‘the West’ for fear that it carries the residue of an imperialist and racist past.’²⁵ They think that Western values are the values of the white race or the values of the people of European and North American origin. As stated by Rachman, ‘American and European politicians like to talk about values and institutions. But for billions of people around the world, the crucial point is simpler and easier to grasp. The west is the part of the world where even ordinary people live comfortably.’²⁶ Indeed, for ordinary citizens of the world democracy is about following a rule-based system under which people live comfortably not only in material terms but because they can speak their minds and shape their own and their children’s futures.

There are some stark differences in values within the legal and political systems within the West itself. The Anglo-Saxon values, which place a great deal of emphasis on individual autonomy and right to property, are slightly different among the Western European countries with civil law systems, which accept the centrality of the State where the right to property was contingent and tenure was for the State to determine.²⁷ A common law system is that which is largely un-codified and reflects the legal system of England as developed from the Middle Ages onwards. Common law systems do have some elements of codification in the form of statute but primarily depend upon judicial precedent as determined by the courts within an adversarial system for the definition and application of law and legal principles.

²⁴ See for example, J Ball, GCHQ Views Data without a Warrant Government Admits, The Guardian, UK (29 October 2014) <<http://www.theguardian.com/uk-news/2014/oct/29/gchq-nsa-data-surveillance>>, M Brown, E Snowden, The True Story behind his NSA Leaks, The Telegraph, UK (24 October 2014) <<http://www.telegraph.co.uk/culture/film/11185627/Edward-Snowden-the-true-story-behind-his-NSA-leaks.html>>.

²⁵ L Siedentop, Remember the Religious Roots of Liberal Thought, The Financial Times, London (24 January 2014) 13.

²⁶ G Rachman, The West is Losing Faith in its Own Future, The Financial Times, London (10 December 2013) 13.

²⁷ See for example, JH Baker, The Common Law Tradition: Lawyers. Books and the Law (Hambleton Continuum, UK, 1999); BS Markesinis (ed) The Coming Together of the Common Law and the Civil Law (Hart Publishing, Oxford, 2000).

Civil law systems on the other hand are codified and the role of the judge is to apply the relevant code to the facts in hand.

Those countries with a common law legal tradition such as the UK and the USA accept the notion of a free society as an aggregation of free individuals in which the liberty of the individual is sacrosanct, so much so that neither judges nor politicians can curtail personal liberty inherent in the individual. Civil law countries, however, are prepared to compromise certain individual rights in favour of societal values and interests in accordance with the 'general will', and elevate majority rule over individual liberty.

Further, the demographic picture in many Western countries is changing rapidly.²⁸ It was announced in 2012 that there are more children of non-white parents born in the USA than of white parents.²⁹ Many major cities in the USA already have a huge proportion of non-white population. President Barack Obama himself is of mixed race. The USA is a melting pot of immigrants from all over the world. A vast majority of those who have chosen to immigrate to the USA have done so by electing to live a life in a democratic 'free' country. Their commitment to democracy and human rights is as strong as those of the white race.

Given the ratio of new-born children and the migration from other countries, the USA is likely to have a majority population as non-white within the foreseeable future. But that is unlikely to mean that the USA government of the future will be less committed to democracy and human rights both at home and abroad. Once people accept a value system they are going to place their trust in that system. For instance, the Cuban-Americans want to see more democracy in Cuba, and the same applies to the Cambodian-Americans for Cambodia. The list goes on and the same is the case with people of non-European origin residing in countries like Great Britain and France.³⁰

The results of the latest census in the UK conducted in 2011 showed that people of non-white origin or extraction are now in the majority in London. David Coleman, an Oxford academic, has predicted that the combined population of ethnic minorities will exceed white Britons in about 2070, therefore white Britons are set to become a minority by the end of the 21st century as the country's ethnic population soars.³¹ While a right wing British Conservative politician, Enoch Powell, was criticised for racist undertones in his speech made in 1968 known, famously or infamously (depending upon who one listens to), as the 'Rivers of Blood' speech,³² his predictions that there would be one immigrant for every ten indigenous white British by the turn of the 20th century, and the indigenous white British would be in minority in due course are turning out to be true.

²⁸ USA Census Bureau Projections Show a Slower Growing, Older, More Diverse Nation a Half Century from Now, The United States Census Bureau (12 December 2012)<<http://www.census.gov/newsroom/releases/archives/population/cb12-243.html>>.

²⁹JS Passel, G Livingston and D'Vera Cohn, Explaining Why Minority Births Now Outnumber White Births, Pew Research: Social and Demographic Trends (17 May 2012),<<http://www.pewsocialtrends.org/2012/05/17/explaining-why-minority-births-now-outnumber-white-births/>>.

³⁰ Research conducted by University of Leeds and published in 2010, see M Tran, Ethnic Minorities to Make up more than 20% of UK Population by 2051, The Guardian, UK (13 July 2010).

³¹ White Britons are set to become a Minority as Ethnic Population Soars, The Times(2 May 2013) 16.

³² See full text of his speech, Enoch Powell, Rivers of Blood Speech, The Telegraph, London (6 November 2007)<<http://www.telegraph.co.uk/comment/3643823/Enoch-Powells-Rivers-of-Blood-speech.html>>.

He was ahead of his time, but wrong-footed in his meaning. He was not far sighted enough to see that the forces of globalisation supported by the international human rights agenda, arguably inspired by Western values, would turn the world into a global village with a rainbow population and the process would prove unstoppable and beyond the powers of politicians no matter how conservative they wished to become. Nor did he tell his audience that the ancestors of most of the so-called 'indigenous' white British themselves had migrated to Britain from elsewhere, whether Nordic or other northern European countries or beyond, in both the distant and near past.

He did not have the foresight to see that the British themselves would benefit from globalisation and again reach all four corners of the world and settle in different countries doing business or offering their services long after their empire had faded. Just the way people of other origins have populated the British Isles, the British have gone on to populate other lands. The British are some of those who have benefited most from the opportunities offered by globalisation and universalisation of human rights. Whether as business men and women, professionals, adventurers, explorers, artists, teachers, philanthropists and missionaries or in some other capacity, the British have spread themselves as widely as they did as colonial administrators during the colonial era.

A similar pattern of demographic change has been predicted not only in the USA but also in other Western countries such as Australia, Canada, and New Zealand which have accepted a large number of migrants to build and sustain their economy. But the commitment to the rule of law, human rights and democracy on the part of the non-white majority is as strong as ever and is not different from the values of the native white population. London has thrived on these values and those who wish to thrive in London will continue to uphold these values regardless of their race, religion, colour, ethnicity or origin.

Some people seem also to be apprehensive about the rapid growth of the Muslim population, a religion traditionally perceived as non-amenable to human rights, in many Western countries such as the UK. It was reported that almost "a tenth of babies and toddlers in England and Wales are Muslim" and the "percentage of Muslims among the under-fives is almost twice as high as in the general population."³³ With the increase in the Muslim population, Islam seems to be the fastest growing religion in many Western countries.³⁴ However, whilst a vast majority of the Muslim population in the Western countries may practice Islam as their religion they are democratic in their outlook. They know that they have to live by democratic principles for their own good in any multi-ethnic, multi-racial and multi-cultural society since the regime of human rights is a generous regime to all. It does not require any one to give anything to anybody. All it requires is for everybody to let others have what already is theirs, that is, the rights that each and every human being has as a human being.³⁵ The following words of Isaiah Berlin in defence of human rights speak volumes about the rationale behind the respect for human rights:

³³ D Kennedy, Rise in Muslim Birthrate as Families Feel British, The Times, London (10 January 2014) <<http://www.thetimes.co.uk/tto/news/uk/article3971041.ece>>.

³⁴ Ibid.

³⁵ For a discussion of the nature and 'origin' of human rights, see for example, M Dembour, What are Human Rights: Four Schools of Thought, 32(1)Hum Rts Q(2010) 1.

If you ask why we believe in human rights ... I can say that is the only decent, even tolerable way human beings can live with each other, and if you ask what is 'decent' I can say that is the only kind of life which we think that human beings should follow, if they are not to destroy each other.³⁶

That is one reason why the intellectuals of Jewish heritage who fled the tyranny of Hitler seeking refuge in the free world have been some of the staunchest supporters of human rights and have contributed so much to the development of international human rights law. The same is also true of many people belonging to other religious and ethnic groups that have fled or left their home countries and settled in Western countries. Many Muslims fled their home countries ruled by oppressive and dictatorial rules and sought refuge in Western countries such as the UK. They know the pain of life under the oppressive regimes they have left behind. Therefore, they would be as equally committed to human rights as any local or indigenous population and feel as British as anyone else in Britain.

7. Redundancy of the concept of Western versus non-Western values

Regardless of the origin of human rights in Western thought, States are bound by human rights standards, especially those relating to civil and political rights, even if they are not a party to one or other human rights treaty, because these rights are enshrined in the Universal Declaration of Human Rights and form a key part of the fundamental rights and freedoms embodied in national constitutions of countries around the globe. That is why no State would like to be criticised for not honouring the provisions of UN human rights treaties.

Indeed, the Euro-centric origin of international law, the Western philosophical foundations of human rights,³⁷ the use of the Western developed Internet and other social media to promote human rights and democracy, and the proliferation of human rights literature in the English language contributes to the case that the human rights agenda is a Western one. However, just the manner in which billions of people around the world have been the grateful beneficiary of the World Wide Web developed by a Briton, Sir Tim Berners-Lee, without thinking for a moment who invented it because of its utility, human rights values are also subscribed to by so many people and nations around the globe regardless of their origin in Western thought. This is because most people regard human rights values as good values, and consider them to be good values because they have become their own.

The Westernisation of the world, especially among the youth, is underway on a massive scale around the globe. The educated youth of the world, whether in China, India, Singapore, South Africa, Russia or in Iran, have a great deal in common, whether this is to do with fashion, music or a sense of right and wrong. The forces of globalisation remain powerful and have brought the youth of the world closer to Western values. The rise of English as a world language, the cross-border movement of people seeking better education and jobs, the increase in the number of business elite running global companies and living in global hub cities, increase in human rights education and awareness, and the trans-border flows of ideas has helped the youth of the world today gravitate towards Western values. Thus, generally speaking, the youth of today are liberal in their outlook and beliefs, and those interested in

³⁶As quoted in C Patten, *East and West* (Macmillan, London, 1998) 179.

³⁷ See VA Leary, *The Effect of Western Perspectives on International Human Rights*, in, AA An-Na'im and FM Deng (ed) *Human Rights in Africa: Cross-Cultural Perspectives* (The Brookings Institution, Washington DC, 1990)15-30; J Donnelly, *Human Rights and Western Liberalism*, *ibid* 31 ff.

politics they are likely to support the values behind human rights, democracy and the rule of law.³⁸

States may differ in their views on any given international matter at any given point in time, whether it is Syria or Libya, all States have accepted the universality of human rights and the developing countries of Asia, Africa and Latin America are carrying out the reforms required to implement human rights and rule of law. Developing countries are by definition developing not only in terms of their economy but also in terms of their political and legal systems. Indeed, the economic growth that countries such as China and Vietnam have achieved is on the basis of the policy of economic liberalisation and openness. In doing so, these States have joined the WTO, a rule-based organisation, rather than resorting to tighter control of human ingenuity and entrepreneurship and more regulation. If we buy the idea advanced by Amartya Sen, a prominent scholar of Asian origin and Nobel laureate, with regard to the role of development, then the future of human rights and democracy is secure. He states that ‘Development can be seen ...as a process of expanding the real freedoms that people enjoy.’³⁹ His notion of development is broader than just economic growth.

However, what is true is that the Western civilisation gave the world the modern notion of democracy, rule of law and human rights which now have become universal values. Just in the way English as spoken in China by the Chinese has become a type of English slang (colloquially known as ‘Chinglish’) and the English spoken in India by the Indians does not necessarily conform to British English, States around the globe will go on adapting, developing and fashioning the universal human rights and the norms of democracy and the rule of law to suit their own local and national conditions. Just the way in which English will remain the global lingua-franca,⁴⁰ regardless of its national variations, the universal human rights norms developed by the West and nurtured and cultivated by the UN norms will remain continue under the auspices of the United Nations to be promoted as universal values, despite the challenges inherent with this approach posed by pluralistic societies and cultural relativism.⁴¹

8. The idea of ‘Asian values’

The idea of so-called ‘Asian values’ being different from ‘Western’ human rights values is also invoked every now and then by people with authoritarian tendencies.⁴² Most such people are those in power or closely linked to power in countries with rulers with an inclination towards autocratic rule. The present author, who is of Asian origin, has come across no serious scholar of Asian origin who has subscribed to this view. Therefore, it is debatable

³⁸ Generation Boris: Politics and Young, *The Economist*, London (1 June 2013). This piece refers to data produced by Ipsos Mori and Yougov polls.

³⁹ A Sen, *Development as Freedom* (OUP, New Delhi 1999) 3.

⁴⁰ So much so that even the President of Germany called in February 2013 for English to become the common language of the European Union. D Charter, *German Call for English as EU language*, *The Times*, London (23 February 2013) 11.

⁴¹ For discussion on the universalism/cultural relativism dichotomy and debate, see for example, A An-Na’im, *Human Rights in the Muslim World: Socio Political Conditions and Scriptural Imperatives*, 3 *Harvard HumRts J* (1990)13; J Donnelly, *Universal Human Rights in Theory and Practice*, 3rd edn (Cornell Univ Press, Ithaca, 2013); M Jacobson & O Brunn (eds) *Human Rights and Asian Values* (Richmond, Surrey, Curzon, 2000); O Savic (ed), *The Politics of Human Rights* (Verso, 1999); PV Ness (ed), *Debating Human Rights: Critical Essays from the United States and Asia* (Routledge, London, 1999).

⁴² See R Whitaker, *Asians Challenge Western Ideals*, *The Independent of London* (July 14 1993) 6; T Koh, *The 10 Values that Undergird East Asian Strength and Success*, *The International Herald Tribune* (11 December 1993) 4.

whether the views of political leaders or the people in government in autocratic Asian countries can really count as the views of Asia that are representative of 'Asian values'. Certainly the vast majority of people of Asia who have fought for democracy and human rights in countries such as South Korea, Thailand, Bangladesh, Pakistan, Nepal, Burma (or Myanmar), and Cambodia, have not subscribed to the idea of 'Asian values' which seems to undermine the universality of human rights and the significance of individual civil and political rights. Indira Gandhi tried to place economic development above civil and political rights in India during the "emergency" that she declared in the 1970s but her views and attempts were decisively rejected by the people of India.

The idea of so-called "Asian values" sought to (1) argue that Asian history and culture, rooted in family and collective well-being, was different from Western individualist culture and thus human rights values developed in the West and promoted by Western countries were not fully applicable to the Asian situation; (2) support the model of economic development led by "benevolent" authoritarian rulers; (3) place economic, social and cultural rights above civil and political rights; (4) support the argument that the right to development had to be given precedence over other individual rights and liberties; and, (5) argue that the UN human rights norms had to take into account the theory based on regional and cultural relativism.⁴³

One of the proponents of 'Asian values' is the former prime minister of Singapore, Lee Kuan Yew, and many political leaders of Asia with autocratic tendencies have sought to take his lead. Their argument, which is often referred to as 'the Lee thesis', is that restricting civil and political rights helps to stimulate economic growth which will bring people out of poverty. This was advocated by delegates from a number of countries, including China, Singapore, and other East Asian countries, in Vienna during the World Conference on Human Rights in 1993. For instance, the foreign minister of Singapore argued in Vienna that "universal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity."⁴⁴ The spokesperson of the Chinese Ministry of Foreign Affairs went further and stated that: "Individuals must put the state's rights before their own."⁴⁵

Asia is such a vast continent with more than 60 percent of the world population and is so heterogeneous in character that there are very few views and values that can be identified as purely or truly 'Asian'. Although the composition of the population of much of Asia, especially west of Iran and east of Japan can basically be described as 'Chindia', that is, of Chinese and Indian race in terms of complexion, traits and heritage, Asia is enormously diverse in terms of its culture, religion, and social and political values. As Ghai states, 'It would be surprising if there were indeed one Asian perspective, since neither Asian culture nor Asian realities are homogenous throughout the continent.'⁴⁶ Sen neatly sums up the situation as follows: 'There are no quintessential values that apply to this immensely large and heterogeneous population, none that separate them out as a group from people in the rest of the world.'⁴⁷ He goes on to state that 'there is little evidence that authoritarian politics actually helps economic growth.'⁴⁸ Therefore, what Asian values are would be debatable, and

⁴³ See generally, Y Ghai, *Human Rights and Governance: The Asia Debate*, 15 *Australian YrbkIntl L* (1994)1-34; J Donnelly, *Cultural Relativism and Universal Human Rights*, 6(4) *Hum Rts Q* (1984)400-409.

⁴⁴As quoted in A Sen, *Development as Freedom* (OUP, Oxford, 1999) 149.

⁴⁵ *Ibid.*

⁴⁶ Y Ghai, *ibid.*, 6.

⁴⁷Sen, *supra* note 39, 231.

⁴⁸*Ibid* 15.

we might question who has the authority and legitimacy to define something as an ‘Asian value’.

The values advanced by the political leaders or people in government in some autocratic Asian countries cannot be taken as the views or values of the people in those very countries, let alone the views of the political leaders and people of the rest of Asia. The people in those countries have not been given a real choice or voice with which to say what values they stand for. Given the choice, it is likely they will say that their values are no different from the values of the freedom-loving people of the rest of the world, including the West.⁴⁹

As Sen argues, ‘Aung San Suu Kyi has no less legitimacy – indeed clearly has rather more – in interpreting what the Burmese want than have the military rulers of Myanmar, whose candidates she had defeated in open elections before being put in jail by the defeated military junta.’⁵⁰ Wherever they had a choice in Asian countries such as in South Korea, Bangladesh, Nepal, Pakistan, Thailand and India the people in those countries have opted for the values embodied in democracy, the rule of law, and human rights, just as have the people of Western Europe or North America. Asia is not just Southeast Asia or the Far East. Nor is the authoritarian value advanced by a group of political leaders or government officials from Southeast or Far Eastern Asian countries to be regarded as ‘Asian’ Value.

Asia as a continent is the place of origin for all major religions of the world, including Christianity, Hinduism, Islam, and Buddhism. While Christianity is a major religion in the Philippines, an Asian country, Islam dominates Indonesia and many other Asian countries, whilst Hinduism is the main religion in Nepal and India, and Buddhism in Sri Lanka, Thailand and Cambodia, etc. If any values can be identified as Asian values, the Hindu-Buddhist values come closest, since a vast swathe of the population in Asia was and still is under the influence of the Hindu-Buddhist heritage. A visit to Nara, the ancient capital of Japan, reveals the deep influence of Sanskrit, the language of Hindus in antiquity, and the teachings of Lord Buddha on Japan. Similarly; a visit to Dhaka during the Bengali New Year, which is also the New Year in India, Nepal, Thailand, Sri Lanka and Cambodia, etc., demonstrates how revered the great Bengali poet, Rabindra Nath Tagore is. The world famous Angkor Watt, built by a Hindu Khmer king in Cambodia, Suryavarman, is a vivid reminder of that country’s Hindu-Buddhist heritage.

As stated by Amartya Sen, ‘To see Asian history in terms of [a] narrow category of authoritarian values does little justice to the rich varieties of thought in Asian intellectual traditions. Dubious history does nothing to vindicate dubious politics.’⁵¹ Indeed, the following passage from the work of Rabindra Nath Tagore, another Nobel laureate, beautifully sums up the Asian values that flow from the notions of tolerance and universalism deeply rooted in Hindu⁵² and Buddhist ideology, the two prominent religions of Asia:

Whatever we understand and enjoy in human products instantly become ours, wherever they might have their origin. I am proud of my humanity when I can acknowledge the poets and artists of other countries as my own. Let me feel with unalloyed gladness that all the great glories of man are mine.⁵³

⁴⁹ See, for instance, Aung San Suu Kyi, *Letters from Burma* (Penguin Books, London, 2010).

⁵⁰ Sen, *supra* note 39, 247.

⁵¹ Sen, *ibid* 248.

⁵² P Subedi, Are the Principles of Human Rights “Western” Ideas? An Analysis of the Claim of the “Asian” Concept of Human Rights from the Perspectives of Hinduism, 30 (1) *California W Intl LJ* (1999) 45-69.

⁵³ From RN Tagore, *Letters to a Friend* (Allen & Unwin, London, 1928), as quoted in A Sen, *Development as Freedom* (OUP, Oxford, 1999) 242.

The same is true of human rights and democracy. Human rights may have their origin in the West, but they have become global. The Greek, the French and the British philosophers were born in those countries but they were and remain philosophers for the whole of humanity who gave the world the notions of democracy, human rights, equality and fraternity.

9. India's approach to human rights

Human rights treaties, be it the European Convention on Human Rights or the International Covenant on Civil and Political Rights, draw on a common heritage of political traditions, freedoms, liberties and the rule of law to be found in countries such as Britain. According to Lord Bingham, credit for coining the expression 'the rule of law' is usually given to Professor A.V. Dicey, the Vinerian Professor of English Law at Oxford who used the phrase in his book *An Introduction to the Study of the Law of Constitution*, published in 1885.⁵⁴ In Bingham's view, one of the ideas behind the rule of law is that the law must afford adequate protection of fundamental human rights.⁵⁵ It is the concept of the rule of law that provided the basis for democratic constitutions around the world and the international human rights treaties. That is why whether it was for the Indians, the Americans or the leaders and the people of many Commonwealth countries it was 'down with the British Empire, long live the values of the British empire'!

When America gained independence from Britain it carried on the British tradition of democracy, rule of law and the respect for fundamental rights and freedoms. One may argue that since most of the leaders of the American Revolution were of British origin it was not surprising that they decided to govern themselves within a Western democratic system, albeit they adopted a presidential system of government rather than the parliamentary system practised in Westminster. But when India, a populous non-Western Asian country, became independent it too followed suit and made a wholesale subscription of not only the Western concept of democracy but also the British parliamentary system of government. The Americans and the Indians gained their independence from Britain but the values of the British Empire lived on in their countries.

9.1 Policies of the post-Independent India

Unlike America, an offshoot of Britain, India was a different case; it had its own Eastern ancient and rich religious, political and cultural heritage and it could have turned to its own heritage to develop its own system of government upon independence. But it did not do so. Although Mahatma Gandhi led the Indian independence against the British relying on the principle of non-violence drawn from the Hindu and Buddhist religious teachings,⁵⁶ when it came to establishing a system of government for independent India he along with Pandit Nehru embraced Western style democracy and a British system of government. This is one reason why critics of Nehru and of other people at the highest echelon of post-independent India have said that the British left India by handing over power to their own Indian protégés. Historians will tell us why Gandhi and Nehru did not think of developing a system of governance for India based on Eastern values or Hindu or Buddhist values. After all, India had a system of government prior to the colonial period. Going even further back in history India had quite elaborate scriptures concerning statecraft such as Kautilya's *Arthashastra* or

⁵⁴ Bingham, *supra* note 10, 3.

⁵⁵ *Ibid.*, 66.

⁵⁶ See for an introduction to the work and life of Mahatma Gandhi; BC Parekh, *Gandhi* (OUP, Oxford, 1997).

even the Mahabharata which contains the teachings of not only Lord Krishna but also that of the great warrior and statesman Bhishmapitamaha, a highly revered elder guardian of both the Kauravs and Pandavas, who faced each other in the battlefield of Kuruchhetra in this epic war. After the war of Mahabharata was over, Bhishmapitamaha imparted important wisdom of governance and statecraft to the victorious Pandavas while addressing Yudhishthira.⁵⁷

Of course, what one could see in the ancient Hindu scriptures like Mahabharata or Kautilya's Arthashastra was not enough upon which a fully functional system of governance could be built that would be suitable for 20th century India. For instance, the Hindu polity was not developed enough so as to cover all aspects of modern governance such as holding elections to positions of power. However, there was some base upon which to build and improve a system of government based on Eastern philosophy.

Perhaps for Gandhi the challenge or the priority was to be rid of the British on the one hand, and to hold India together on the other, since the tension was already high between the Muslim and Hindu populations of India during the struggle for freedom, rather than developing a political system based on Eastern values. Gandhi must have known that if he tried to develop a system of governance for India along Hindu ideals he would antagonise or alienate the Muslim population and vice versa. Hence, the neutral policy for him to pursue was to accept the system of government of their colonial ruler.

After all, both Gandhi and Nehru had been educated in law in Britain and had come to accept the virtues of the British system of democratic governance. It was easy to accept and adapt a readymade system of Western democracy rather than pursue something different. However, in spite of the attempts by Gandhi to hold India together, the country divided along religious lines in the immediate aftermath of independence, and both of the Hindu and Islamic states that emerged from the partition ended up embracing not only Western democracy but also the British system of parliamentary democracy.

It is also possible that Gandhi saw in Western democracy the tenets of Hinduism and Hindu ideas of good governance and had thus no difficulty in embracing a more advanced Western system of democratic governance. After all, many of the principles that lay behind the UDHR of 1948 can be found in Hinduism. After reading law in England and practising it in South Africa he must have come to the conclusion that the Western system of democratic governance would be best suited for post-independence India with so much diversity. The other factor in the equation must have been the existence of the British built and operated crucial institutions of liberal democracy in India, including courts, and the professional administrative apparatus and the rules associated with them. To build on that which was already in existence rather than start building things from scratch may have been the pragmatic and simpler approach.

⁵⁷ Of course, we cannot compare the tenets of Hinduism, in which the king exercised all legislative, executive and some judicial powers, often invoking 'divine powers' with a modern system of democratic governance founded on the work of Western philosophers. However, what was in practice in India during the pre-colonial period was not much different from the practice in most European countries of the time which were ruled by monarchs. Having said this, it is submitted that some notions or tenets of good governance were there in Hinduism. There was some degree of separation of powers between the executive and the judicial agencies of the state and the king was supposed to rule his kingdom as a benevolent ruler. For instance, Bhishma tells Yudhishthira, the newly crowned king of Hastinapur that 'The best king is one whose subjects live in freedom and happiness as they do in their father's house ... the very core of a king's duty is the protection of his subjects and their happiness.' K Subramaniam (trns) Mahabharata (BhartiyaVidyaBhavan, Bombay, 1977) 709.

9.2 Hindu tenets

Although the vernacular version of Hinduism in the middle age was ridden with inequality based on gender and caste systems, there were elements of good governance in Hindu philosophy. Articulating the qualities needed in the ruler, the king, a celebrated thinker and writer in ancient Hindu pantheon, Kautilya, states: “In the happiness of his subjects lies the king’s happiness; in their welfare his welfare. He shall not consider as good only that which pleases him but treat as beneficial to him whatever pleases his subjects.”⁵⁸ There have been instances in Hindu civilisation where the heir to the throne has been denied the crown for lacking in qualities needed in a king as a benevolent ruler. An earlier or more ancient version of Hinduism known as the Vedanta Darshan (i.e. the Vedanta philosophy) had no elements of discrimination based on gender or caste. According to this philosophy, the soul in every human being is the same; therefore, all human beings should be treated as such.

When Mahatma Gandhi led the independence movement of India, his values were informed by both Hindu and Buddhist traditions and were based on non-violence and respect for the dignity of each and every individual regardless of their colour, creed, race, gender or faith. For instance, Buddhism, arguably an off-shoot of Hinduism, is founded, among other values, on the principles of non-violence and non-discrimination, both of which are conducive to creating an environment in which people can exercise their rights and freedoms. These values advanced by Gandhi are not so different from the values that inspired the writing of the Universal Declaration of Human Rights. If the freedom fighters of India or other Asian or African countries had been inclined during their struggle for independence to draft their own declarations of rights, they would no doubt have written a progressive document.

Hinduism is not and has never been an organised religion. Unlike the Pope or Archbishop or the Dalai Lama or Head Imam or Ayatollah in other religions, Hinduism has no worldly head. Hindus are basically self-governing autonomous individuals who are expected to follow a certain code of conduct known as Dharma in their relations to each other, to the State, to nature and to God in a manner which is in harmony with nature and the law of nature.

9.3 Buddhist teachings

The Vedanta Philosophy advocated equality among all human beings. But latter day corruption of the Hindu religious scriptures divided the society into different castes creating an unequal society and relegating the people belonging to lower classes into an unequal status. Dissatisfied, disenchanted and disillusioned by these discriminatory practices in Hinduism and concerned by the misery suffered by other people, a Nepalese Hindu prince, Siddhartha Gautam, decided to rebel and embarked upon a quest for an idea, belief and social yardstick to bring harmony, peace, equality and happiness among all human beings. He meditated for a long time, achieved Nirvana, preached universal values based on non-violence, inner peace, and equality of all human beings and came to be known as Gautam Buddha, the learned and enlightened.

He was the first Mahatma of the first rate. Although he was a religious rebel of the time and largely an atheist, he did not discard Hinduism in its entirety, but sought to reform it by propounding new values and ideas by advocating egalitarianism and tolerance. His teachings revolved around five virtues of human life: compassion, charity, generosity, purity, and

⁵⁸See, verse 1.19.34, LN Rangarajan, (ed, trns&intro) *Kautilya’s Arthashastra*(Penguin Books, India, 1992) x.

truthfulness. No wonder, that the masses of the people across Asia who had been relegated into an inferior category by the Brahministic version of Hinduism were attracted by the egalitarian values of Buddhism, which offered people a perfect antidote to the discriminatory practices in Hinduism. It is also the modern day notion of egalitarianism and the inherent rights of every human being to have their personal dignity protected and respected that has enabled human rights to become popular in the contemporary world.

9.4 Embracing Western values

When other Asian and African countries gained their independence they too followed suit and embraced Western-style democracy. Just like Gandhi and Nehru, many of them were educated in the West. Even when Mohamed Ali Jinnah established a new state, Pakistan, on the strength of Islam, he decided to embrace the British system of governance rather than seek to found a new system based on Islamic values. They did not like the Western colonial rule of their mother countries but liked the way the Western countries governed themselves at home. With the adoption of a democratic system of government in one after another developing country democracy gained a global character. When the colonial rulers left their colonial territories, especially the British, they left behind their language, and their values and legal system, which successive generations of Indian and other developing country leaders have cultivated and developed.

There may be, as outlined by Mishra, an increase in resentment within Asian and African countries with a dawning realisation of the manner in which Western countries ruled the Asian and African countries⁵⁹, but it is not directed against Western values such as the rule of law, democracy and human rights. For instance, the vast majority of Indians do not care who ruled India in the distant past, let alone hold any grudge. They want to lead a good life now and get on with things. Of course, with the awakening of Asia and Africa there is a greater realisation of the repression and oppression of the colonial rulers during the colonial rule but it is also true that the oppressive rulers of many of these countries of today are trying to protect their rule by exploiting the hatred against the imperialist rule in the years gone by, Robert Mugabe in Zimbabwe being such an example. Even so, many of these countries, which now form part of the Commonwealth led by the British Queen, have embraced democracy, the rule of law, human rights and in many cases a Western style or even Westminster system of government.

It was on 14 December 2012 that Heads of Governments of the Commonwealth countries agreed on a new Commonwealth Charter setting out core values such as democracy, rule of law, and respect for human rights, and aspirations of the organization which represents about 2 billion of the world's population. With regard to human rights, Article II of the Charter reads as follows:

We are committed to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. We are committed to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just and stable societies. We note that these rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively.

⁵⁹ P Mishra, *From the Ruins of Empire: The Revolt Against the West and the Remaking of Asia* (Penguin Books, India, 2012).

We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds.⁶⁰

In democratic countries such as India, political leaders have been willing to give credit to the values of democracy, free trade and the rule of law of their colonial powers. For instance, in a speech delivered in Oxford in 2005, the Indian Prime Minister, Dr Manmohan Singh stated that “what is significant about the Indo-British relationship is the fact that despite the economic impact of colonial rule, the relationship between individual Indians and Britons, even at the time of our Independence, was relaxed and, I may even say, benign.”⁶¹

He went on to quote the following reply of Gandhi to a question put to him in 1931 as to how far he would cut India off from the Empire: ‘From the Empire, entirely; from the British nation not at all, if I want India to gain and not to grieve.’ Posing a question as to ‘What impelled the Mahatma to take such a positive view of Britain and the British people even as he challenged the Empire and colonial rule?’, Dr Singh went on to expound that⁶²

It was, undoubtedly, his recognition of the elements of fair play that characterized so much of the ways of the British in India. Consider the fact that an important slogan of India's struggle for freedom was that "Self Government is more precious than Good Government". That, of course, is the essence of democracy. But the slogan suggests that even at the height of our campaign for freedom from colonial rule, we did not entirely reject the British claim to good governance. We merely asserted our natural right to self-governance.

Today, with the balance and perspective offered by the passage of time and the benefit of hindsight, it is possible for an Indian Prime Minister to assert that India's experience with Britain had its beneficial consequences too. Our notions of the rule of law, of a Constitutional government, of a free press, of a professional civil service, of modern universities and research laboratories have all been fashioned in the crucible where an age old civilization met the dominant Empire of the day. These are all elements which we still value and cherish. Our judiciary, our legal system, our bureaucracy and our police are all great institutions, derived from British-Indian administration and they have served the country well. (emphasis added)

...
The idea of India as enshrined in our Constitution, with its emphasis on the principles of secularism, democracy, the rule of law and, above all, the equality of all human beings irrespective of caste, community, language or ethnicity, has deep roots in India's ancient civilization. However, it is undeniable that the founding fathers of our republic were also greatly influenced by the ideas associated with the age of enlightenment in Europe. Our Constitution remains a testimony to the enduring interplay between what is essentially Indian and what is very British in our intellectual heritage ...

The idea of India as an inclusive and plural society draws on both of these traditions. The success of our experiment of building a democracy within the framework of a multi-cultural, multi-ethnic, multi-lingual and multi-religious society will encourage all societies to walk the path we have trodden. In this journey, both Britain and India have learnt from each other and have much to teach the world. This is perhaps the most enduring aspect of the Indo-British encounter. No Indian has paid a more poetic and generous tribute to Britain for this inheritance than Gurudev Rabindranath Tagore. In the opening lines of his Gitanjali, Gurudev says:

"The West has today opened its door.
There are treasures for us to take.
We will take and we will also give,

⁶⁰The Commonwealth Charter (March 2013).<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136337/Cm_8572.pdf>.

⁶¹Address by the Indian Prime Minister Dr Manmohan Singh at Oxford University in acceptance of an Honorary Degree from Oxford University (8 July 2005)<<http://pmindia.nic.in/speech-details.php?nodeid=140>>.

⁶² Ibid.

From the open shores of India's immense humanity."

Not only a scholar-turned-politician figure such as Dr. Singh, but also other authors of Indian extraction have admitted the positive impact of the British colonial rule and Zakaria is an example: 'it is an undeniable fact that the British Empire left behind a legacy of law and capitalism that has helped strengthen the forces of liberal democracy in many of its former colonies – though not all.'⁶³ (footnote omitted) He goes on to state that the first prime minister of India, Jawaharlal Nehru 'spent almost thirteen years in jail fighting the British colonial authorities, but as prime minister of independent India he spent many more years preserving British institutions.'⁶⁴ He concludes: "India got its democracy from the United Kingdom and ...Nehru once described himself as 'the last Englishman to rule India.' He was right."⁶⁵ Therefore, it is difficult to agree with the views that the awakening of Asia has led to an increase in hatred against their former colonial rulers. If it was so, many of the Asian and African countries would not have voluntarily agreed to join the Commonwealth after their independence from Britain and retained their membership to this day. In fact, non-Western democracies like India and South Africa bring and demonstrate that 'Western' values are actually universal values.

9.5 Human rights challenges for India

If power, whether economic or political or both, is shifting to the East, it will not shift only to China but also to established democracies such as India where the values of democracy and human rights are valued. A former British High Commissioner (Ambassador) to India, Sir Michael Arthur, has proclaimed that "India will be central to global developments in this century".⁶⁶ He says so on the basis of India's three fundamental strengths – diversity, democracy and demography and two distinct characteristics – spiritual and secular. On the basis of these strengths and characteristics he maintains that 'India has no peer in the modern world'.⁶⁷ China, on the other hand, lacks democracy and its spiritual base is much weaker. Therefore, neither the Western countries nor the UN human rights agenda have to fear from this shift in power to the East.

Of course, China's economic progress is more rapid than India's. But India has a higher percentage population of younger, well-educated and dynamic people. Hence, India's rise to prominence will start to peak as China's starts to decline due to the latter's ageing population. What is disappointing though is that given its internal system of democratic governance and ancient pro-human rights heritage, India has not been able to provide leadership on global human rights issues in the international arena. There are several reasons for this.

First, India's domestic democratic polity has not been fully translated into the conduct of its foreign policy. It does not make sense for many observers to see China and India voting in a similar pattern in UN human rights bodies such as the Human Rights Council. India's role in the world arena of human rights is a contradiction in terms. It is a democracy at home but finds itself in alignment with countries which have a poor record of human rights.

⁶³ F Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (WW Norton & Company, NY/London, 2007) 57.

⁶⁴Ibid 93.

⁶⁵Ibid 106-107.

⁶⁶ Sir Michael Arthur, *How far will India Help Shape the 21st Century?*, 45 *Asian Affairs* (2014) 201.

⁶⁷Ibid 202.

Second, the Indian diplomatic machinery is lacking in cohesion, strength and ambition. This machinery is still conservative and the colonial hangover is still influencing the decision making process of the mandarins of India.

Third, it lacks the resources and the will needed to provide global leadership. For instance, India has not submitted its report to the Human Rights Committee under the 1966 Covenant on Civil and Political Rights for the last 20 years.

Fourth, India is constrained by its association with other third world dictatorial regimes through loose groupings of States such as the Non-Aligned Movement.

Fifth, India has its own human rights problems, whether concerning separatist or secessionist movements or Maoist insurgency or other law and order problems, to deal with, be it in Kashmir⁶⁸ or Bihar or far flung places such as those bordering Burma.⁶⁹ By getting involved with other states internal affairs the Indians seem to fear that others will interrogate theirs. That is why the India's role has been limited in the promotion and protection of human rights internationally.

Sixth, not having enjoyed particularly cordial, productive and progressive relations with most of its immediate neighbours, the Indian diplomatic machinery has been expending much of its resources in dealing with its neighbours and often meddling in the internal affairs of neighbouring countries without having a progressive agenda to promote.

Seventh, the Indian position within various UN human rights agencies has been defensive due to its own human rights record. Although India is politically democratic, the culture of governance is authoritarian especially at the local level. For instance, beating up people arrested on suspicion of committing a crime is quite common throughout India. This may be one reason why India remains one of the few democracies that has not yet ratified the UN Convention against Torture. India's position has not been ambitious or fully engaged enthusiastically in global human rights matters within the UN.

Eighth, Indian diplomats seem to suffer from 'developing country syndrome' rather than rising to the challenge of providing global leadership on issues in which India is well placed to act. India has a glowing record in providing competent leadership on issues of development, North-South, and environmental protection, including climate change and within the G77 and the Non-Aligned Movement, but does not have an equally glowing record on global human rights issues.

Ninth, civil society in India is relatively weak compared to the size, history and tradition of the country and is not effective in applying pressure on the government in New Delhi to act in a manner that is conducive to promoting human rights internationally. Tenth, the culture of research in social sciences and law is still not as vibrant as it should be to support India's aspiration for global leadership in areas such as human rights.

⁶⁸ For instance, a report compiled by the Association of Parents of Disappeared Persons and the International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir alleged in 2012 that more than 500 members of India's armed forces had violated human rights in Indian-administered Kashmir, including custody deaths, abduction, torture and rape. Indian Officials Accused of Kashmir Rights Abuses, BBC News, India (6 December 2012) <<http://www.bbc.co.uk/news/world-asia-india-20624798>>.

⁶⁹ See a report on how the people of states in northeastern India feel about their place within the union of India *Banyan: Another Country*, The Economist, London (9 March 2013) 60.

However, it is only a matter of time before some of these handicaps will start to dissipate. After all, since India aspires to occupy a seat at the high table of international diplomacy within the UN, that is, to become a permanent member of the UN Security Council, it will have to provide leadership in areas where it has strengths and the UN human rights agenda is one of them. When the Indian diplomatic machinery is able to demonstrate that it has a strong spine and ambition it will be well placed to provide leadership in promoting democracy and human rights globally. India will then be joined by other Asian and African democracies such as the Philippines, South Korea, and South Africa in this endeavour.

10. China's approach to human rights

It should be noted that contrary to perceptions in certain quarters that China opposes or will oppose an ideology or political system championed by the West, including the UN human rights agenda,⁷⁰ there are no indications that China will do so, will want to do so or will have the ability to do so. Since China experienced oppressive regimes and foreign subjugation prior to and after the Communist Revolution in 1949, the concept of human rights has been alien to China until recently. Of course at the height of Chinese civilisation in the distant past the Chinese culture was an advanced culture of great vitality which has had regard for humanism and pursued harmony of mankind. The Chinese of the time lived a peaceful, prosperous and harmonious life and embraced the teachings of Buddha, the enlightened, which included tolerance and equality of mankind.

However, during the intervening period Chinese society experienced political, mental and economic oppression and the basic feature of this culture was autocracy, which had little regard for notions of human rights and the protection of human dignity and personal liberty. Consequently, the core elements of humanism and human rights were lost in China for a long time. Therefore, when it comes to democracy, the rule of law and human rights, China is still in a defensive position and is likely to remain so for some time to come. Rather, the indications are that China will work with the system and within the system, see the benefit in it but will try to mould it to suit its political and economic needs. The political leaders of China are still too busy managing their own internal affairs rather than being in a position to challenge the international human rights agenda.

China stated in its national report for Universal Periodic Review by the Human Rights Council in 2008 that it “respects the principle of the universality of human rights and considers that all countries have an obligation to adopt measures continuously to promote and protect human rights in accordance with the purposes and principles of the Charter of the United Nations and the relevant provisions of international human rights instruments, and in the light of their national realities.”⁷¹ Thus, the only qualifying notion in China's support for the universality of human rights was that when implementing human rights the “national realities” had to be taken into account. China did not explicitly invoke Communism or socialism to escape from its human rights obligations. Rather, it placed emphasis on its status as a developing country with a history of subjugation.

Although China did not spell out what these “national realities” were, the Chinese report went on to state that “Given differences in political systems, levels of development and historical and cultural backgrounds, it is natural for countries to have different views on the question of

⁷⁰ See generally, Fenby, supra note 3); Shambaugh, supra note 3; Beardson, supra note 3; Jacques, supra note 3.

⁷¹ National Report of China to the Human Rights Council as part of the UPR: A/HRC/WG.6/4/CHN/1 (10 November 2008) 5.

human rights. It is therefore important that countries engage in dialogue and cooperation based on equality and mutual respect in their common endeavour to promote and protect human rights.”⁷² The reference to ‘political systems’ was couched in general and vague terms so that it could encompass reference to Communist or Socialist system of governance. China went on to state that democracy and the rule of law were being improved in the country rather than rejecting these as ‘Western concepts.’

A more prosperous China may mount a challenge to the political hegemony of the West, but not to the human rights agenda promoted by the UN. The current indications are that the Chinese ambition would be geared to forming new political, security and economic alliances similar to NATO or other regional organisations with like-minded States rather than to challenge the values that the UN stands for, including human rights. Challenging the perceived Western hegemony is one thing, but challenging the UN and its human rights agenda is quite another. Instead, owing to the pressure coming from within China, it will have no option but gradually to embrace the international human rights agenda.

11. The Resurgence of BRICS as an opportunity for the UN human rights agenda

The resurgence of the BRICS countries will not necessarily be a problem but an opportunity for the UN human rights system. The BRICS (or for that matter the MINTs) do not amount to the Warsaw Pact. The BRICS countries are a mixed bag politically, culturally and religiously. Their objective seems to be focussed on rebalancing the world political and economic order by reforming the UN, the World Bank and the IMF rather than rewriting the fundamental rules of international law. For instance, the BRICS countries make up 42% of the world’s population and 28% (and rapidly rising) of the global economy, but they have only 11% of the votes at the IMF.⁷³

After trying for years, and with little success, to reform the World Bank and the IMF, especially the weighted voting system within these two institutions,⁷⁴ the BRICS countries have established the Shanghai-based New Development Bank,⁷⁵ which some observers have said ‘looks like a fledgling alternative to the World Bank, leading talk of a ‘Chinese Bretton Woods’.⁷⁶ China has led the way in establishing an Asian Infrastructure Investment Bank, which is seen as a rival to the Asian Development Bank.⁷⁷ Beijing seems also to be moving towards creating the Development Bank of the Shanghai Cooperation Organisation, a six-country Eurasian political, economic and military grouping.⁷⁸

However, none of the resolutions or any documents coming out of the BRICS countries has given any indication that they wish to rebalance or rewrite the fundamental principles of international law or change the UN content of the UN human rights agenda or the UN

⁷²Ibid 6.

⁷³ Essay: China, *The Economist*, London (23 August 2014) 44.

⁷⁴ An official involved in the negotiations for the establishment of this new BRICS Development Bank was quoted in saying that “China feels it can’t get anything done in the World Bank or the IMF so it wants to set up its own World Bank that it can control”. J Anderlini, *Beijing in Push to Form World Bank Rival*, *The Financial Times*, London (25 June 2014) 7.

⁷⁵ Brics Nations to Create \$100bn Development Bank, *BBC News* (15 July, 2014) <<http://www.bbc.com/news/business-28317555>>.

⁷⁶ Essay: China, *ibid*.

⁷⁷ China, 20 Other Countries Initiate New Asian Bank, *Associated Press*, as reported in the *Republica*, Kathmandu (25 October 2014).

⁷⁸ Beijing’s Challenge to the World of Bretton Woods, *The Financial Times*, London (31 October 2014) 12.

mechanisms. Rather, they have reiterated their faith in the basic principles of the Charter of the UN and the universality, indivisibility and interrelatedness of human rights.⁷⁹ The challenge for the UN is to make sure that they move in the right direction and support human rights nationally and internationally. Among the rising powers within the BRICS, Brazil, Russia and South Africa are predominantly Christian and India is predominantly a Hindu state whose message at the core is universalism, tolerance, non-violence, world fraternity, and is a country that made a wholesale subscription to the Western concept of democracy and the system of governance after gaining independence from Great Britain.

The core values of these countries are amenable to human rights. A sizeable proportion of the population of China is Buddhist, a religion which is an off shoot of Hinduism and has at its core, values similar to Hindu values such as peace, non-violence, tolerance, and universalism. The economic rise of China is likely to lead to a greater sharing of power with the Western world, India and an emergent Russia, but human rights and other values enshrined in the Charter of the UN will continue to serve as the norm for such power sharing. There is everything for every state in the principles of general and vague character in the UN Charter and the international human rights agenda.

12. Conclusions

Today's human rights standards are not necessarily Western standards. Nor are they the standards of the developing world alone. Whether human rights have their origins in Western civilisation alone or in other civilisations too depends on how far back in history one can go. For instance, those who maintain that human rights are Western in their origin do not seem to have a proper appreciation of the contribution made by Siddhartha Gautam Buddha, and his disciple King Ashoka the Great of ancient India, to creating a tolerant and egalitarian society.⁸⁰ As stated by Melvyn Bragg, tolerance was a generally accepted value in ancient India long before it was in Europe.⁸¹

This is because Hinduism itself is a tolerant religion. Most of the modern international human rights instruments adopted since the mid-1960s have been adopted with the active support and some at the behest of developing countries. Therefore, to argue that human rights are Western agenda is an insult to the contribution made by other civilisations and by developing countries to the conception and advancement of human rights. The developing countries or those belonging to other civilisations such as those with a Hindu-Buddhist heritage of the East should claim ownership of human of human rights and seek to influence its advancement.

Just as the medicine or technology developed in the West have universal recognition, application and acceptance and benefit humanity as a whole become global without regard for their origin, human rights too have become global and benefit all. For instance, people do not say that they do not wish to apply penicillin because it was developed or invented in the West. Certain inventions of products or ideas have a global reach and application and human

⁷⁹ See, for instance, Sixth BRICS Summit – Fortaleza Declaration of 15 July 2014 (a copy of the Declaration is on file with the present author).

⁸⁰ See C Allen, Ashoka, *The Search for India's Lost Emperor* (Little Brown, London, 2012); NA Nikam&R McKeown (eds), *The Edicts of Asoka* (Univ Chicago Press, Chicago, 1959); A Seneviratna (ed), *King Asoka and Buddhism: Historical and Literary Studies* (Buddhist Publications Society, Kandy, 1994).

⁸¹ M Bragg, In Our Time: Ashoka The Great, BBC Radio(5 February 2015)<<http://www.bbc.co.uk/programmes/b0511tm1>>.

rights are one of them. Global values and global institutions are needed to make sure that everybody respects these global values and that is the main function that the UN human rights agencies were created to carry out. Going by the global trend, it is likely that in tomorrow's world the struggle will be between the State and the individual and the individuals would need more, genuine and stronger human rights and not less.⁸² Making the UN agencies tune in to the demands of the time, rise to the challenges brought about by the changing world and equipping it to deal with the cases of crises, is the challenge of our time.

The rise of the BRICS countries in general and China in particular is likely to diminish the policing role of the West, but not undermine the essence of the ethos that lay behind the UN human rights agenda. Whether Western in origin or not, human rights are here to stay. The question is not where we came from, but where we go from here; this is more important. The impetus to continue to promote the value of human rights in principle is secure but making the protection of human rights a reality for hundreds of millions of people depends on the reform of the UN's human rights system which capable of coping with the challenges brought about by multi-polarism. It is largely the 'soft' power that has been deployed thus far in support of human rights and the resurgence of the BRICS and the creation of the multi-polar world would require the judicialisation of human rights to sustain the values that lay behind the UN human rights agenda.

Thus, just the way the Anglo-Saxon world was informed and inspired by the work of the Greek Philosophers and thinkers, the future world will continue to be inspired and informed by these thinkers and philosophers, even if the West witnesses its economic decline and lessening of its political influence. The challenge posed to democracy by Communism is nearly over. Terrorist outfits such as Al-Qaida and other fanatic organisations such as those fighting for an Islamic State of Iraq and the Levant (known as IS, ISIS or ISIL) are there but they are a force doomed to fail as they have little support or sympathy within the Muslim world. History is unlikely to repeat itself and except for some aberrations such as the activities of rogue states, future versions of terrorist outfits such as Al-Qaida or other similar organisations and nationalist regimes, the world is likely to travel along the path set by the present generation in the form of human rights. The future generation is likely to be too enlightened, educated, interconnected and interdependent to do otherwise.

Just the way the modern Olympic movement which began in Greece some three thousand years ago continues to inspire the youth of every generation and has witnessed some adaptation, change and improvement as it moves from one world city to another, the system of democratic governance developed by Western thinkers and philosophers and put to use by political leaders of the West will grow and continue to become a system of governance globally which will be adapted, modified and improved upon to suit the local conditions in different countries. To conclude, if power is shifting to the East, it will not shift only to China but also to established democracies such as India where the values of democracy and human rights run deep. Therefore, the shift in power to the East is unlikely to have a detrimental impact on the UN human rights agenda and the universality of human rights.

⁸² P Stephens, In Tomorrow's World, It's the State versus the Individual, The Financial Times, London (14 December 2012) 13.