

PROTECTION AND ADVANCEMENT OF HUMAN RIGHTS IN DEVELOPING COUNTRIES: LUXURIES OR NECESSITIES?

MAZHAR SIRAJ

Abstract: The luxury-versus-necessity controversy is primarily concerned with the importance of civil and political rights vis-à-vis economic and social rights. The viewpoint of political leaders of many developing and newly industrialized countries, especially China, Singapore, Hong Kong, Malaysia and Indonesia is that civil and political rights are luxuries that only rich nations can afford. The United Nations, transnational civil society and the Western advanced countries oppose this viewpoint on normative and empirical grounds. While this controversy is far from over, new challenges of “evidence” and “marketization” are emerging. The first calls for a narrative on the history of civil and political rights in the West in the comparative context of the Industrial Revolution and the East Asian Miracle and China’s economic growth. The effects of the recent financial crisis and insulation of China from the Arab Spring further deepen this challenge. The marketization challenge looks at this controversy from the social exclusion angle. It argues that the basic needs covered by the minimum human rights agenda are becoming luxuries in a real sense for those who do not have the power to purchase these needs from the market.

Keywords: human rights, full-belly thesis, civil and political rights, Asian values debate, East Asian Miracle, United Nations, developing countries, basic needs, free market economy

Introduction

Among the wide array of controversies over the modern human rights framework,¹ a major controversy surrounds the view that the protection and advancement of human rights

¹ These controversies, for example, are concerned with the origins of human rights, universality-versus cultural relativity, and the effects of Eurocentric liberal thought and socialist contributions on the international human rights agenda. For a succinct analysis of contemporary controversies, see Donnelly in Dunne and Wheeler (1999, 71-102) and Ishay (2007, xxi-xxviii).

are luxuries that only affluent societies can afford. This view has been advanced by political leaders of many developing and newly industrialized countries (Christie in Beetham 1995, 205-6; Sen 1999, 15; Rajagopal 2003, 219). This view has been opposed by the United Nations, transnational civil society and political leaders of the Western developed nations on two grounds: normative and empirical. In the normative sense, it is argued that human rights bear an intrinsic value and hence their protection needs no justification whatsoever. In the empirical sense, it is argued that human rights are necessary for sustaining life and achieving development and therefore their protection cannot be delayed until a certain level of prosperity has been achieved (United Nations Development Program [UNDP] 2000, 19-26; Australian Human Rights Commission 2001; Amnesty International 2008; Laurin 2005).

The arguments surrounding this controversy are considerably complex and call for a cautious analysis. In the first place, the complexity arises from the distinction between two generations of human rights: “civil and political rights” and “economic, social and cultural rights”. The luxury-versus-necessity controversy is grounded mainly around the relative importance of civil and political rights and economic and social rights. The main argument of many developing and industrialized countries, especially China, Singapore, Hong Kong, Malaysia and Indonesia, is that civil and political rights can be delayed until a reasonable level of economic progress has been achieved. The contention on economic, social and cultural rights is less on their urgency and more on the universalism of these rights. Thus, the nature of the controversy differs for these two sets of human rights.

This paper discusses the luxury-versus-necessity controversy in relation to both civil and political rights as well as economic and social rights, particularly in the context of Asian countries. It begins with an analysis of three variants of the arguments surrounding this controversy. This is followed by a discussion on some emerging challenges which need to be taken up by defenders of the case that human rights are indivisible and necessary for everyone.

Three Variants of the Luxury-versus-Necessity Controversy

In the human rights literature, there are three main variants of the luxury-versus-necessity controversy. Each is briefly explained below.

The full-belly thesis² i.e. economic and social rights take priority over civil and political rights in developing countries.

About six decades ago, the modern human rights framework came into being with the adoption of the Universal Declaration of Human Rights (UDHR). Since then, six core covenants and conventions have been added to this framework.³ While the ratification of

² Howard (1983) applied the full-belly thesis in the African context to denote the viewpoint that when people are hungry, they cannot enjoy civil and political liberties. This term is used less frequently in the human rights literature on Asia, though the argument underlying this thesis is the same as in Africa.

³ These covenants and conventions deal with racial discrimination, civil and political rights, economic, social and cultural rights, discrimination against women, torture and punishment, and rights of the child. For details, see UNDP (2000, 44-45).

these instruments by most of the countries represents an “international normative consensus” (Donnelly in Dunne and Wheeler 1999, 7), considerable differences between the framers of these instruments have existed from the very beginning. Rajagopal (2003, 33) argues that the First World countries have been more interested in the protection and advancement of civil and political rights, as opposed to the Third World countries, which have insisted on the greater importance of economic and social rights, compared with civil and political rights. The latter believed that the provision of the basic necessities and material needs of their population could best be achieved through economic rights. This division led to the adoption of separate covenants on civil and political rights, and economic, social and cultural rights in 1966.

The political elite of developing countries, especially with authoritarian regimes, have rejected equality between civil and political rights and economic and social rights on empirical grounds. They insist that the denial of civil and political rights is “good” for rapid economic development and therefore, they need to focus first on economic growth (Sen 1999, 15 and 148-49).⁴ This belief was forcefully expressed at the 1993 Vienna conference on human rights by the delegates from China, Hong Kong, Singapore, Malaysia and Indonesia (Christie in Beetham 1995). The delegates from South Asia, West Asia and Africa did not endorse this viewpoint formally, but they did not oppose it either (Sen 1999). One implication of this belief is that the protection and advancement of civil and political rights are perceived as undesirable unless a certain level of development has been achieved.

This viewpoint represents the theory that there is a legitimate “trade-off” between civil and political rights and development. The contemporary form of this theory is found in the so-called Asian values debate, wherein the political leaders of China, Singapore and Malaysia assert that the Asians do not care much about political liberties; rather, they are more concerned with rapid economic growth in their own cultural context (Rajagopal 2003, 219). Dunne and Wheeler (1999, 13) argue that this theory has led China, for example, to criticise the international discourse of human rights. In 1991, the Beijing government, in a “White Paper” titled “Human Rights in China”, rejected the emphasis on civil and political rights in favour of a collective right to subsistence. Their position is that the state has a moral responsibility to curtail individual freedoms and political participation in the name of the higher good of community.

This theory (referred to as the full-belly thesis in this paper) is opposed by the United Nations, transnational civil society and political leadership of the developed countries on two grounds: normative and empirical. On normative grounds, it is emphasized that there is no hierarchy among different kinds of rights and that civil, political and economic rights have an intrinsic value, and therefore, need no justification because the freedoms advanced by these human rights are *valued* by the people.

On empirical grounds, the full-belly thesis is rejected from the vantage point of the relationship between civil and political rights and human needs. All freedoms (including the civil and political freedoms such as freedom of speech, freedom of assembly, political participation, etc.) covered by the human rights agenda are indeed necessary for meeting

⁴ This viewpoint is often called “the Lee thesis”, named after the former Prime Minister of Singapore, Lee Kuan Yew. See Sen (1999, 15).

basic necessities and economic growth (UNDP 2000). The main argument is that civil and political rights do not pose any threat to economic development (Rajagopal 2003; Beetham 1995). This argument has been the subject of voluminous literature, which attempts to establish that there is no trade-off between human rights and development; the protection and advancement of human rights are indeed necessary for the development of all countries. Two important works that engage this argument are Sen's (1999) *Development as Freedom* and UNDP's (2000) *Human Development Report 2000*. The central thesis that runs through these works can be summarized as follows: Whatever the definition or the perceived level of development in a culture may be, all kinds of human rights constitute important means as well as ends of development.

Traditionally, development has been identified with the growth of Gross National Product (GNP), or with the rise in incomes, or with industrialization. This narrow view has long obscured the relevance of civil and political rights in the developing economies. Sen (1999) presented a broader definition and argued that development has to be seen as a process of expanding the real "freedoms" that people enjoy. The advancement and protection of civil and political rights have an instrumental role to play in development by expanding the freedoms. Thus, economic growth or an increase in personal incomes is not the ultimate objective, but a means to achieve the "freedoms". They include, for example, freedom from poverty, freedom from illiteracy, freedom from illness, and freedom from malnutrition. In this sense, development requires the countries to remove all the obstacles which restrict human freedoms, such as poverty, lack of public facilities, poor economic opportunities and repressive state apparatus. These obstacles deprive people of the freedom to satisfy hunger, to obtain healthcare, to be adequately sheltered, or to enjoy clean drinking water. This analysis has considerably informed the international human rights discourse. The *Human Development Report 2000*, published one year after Sen's (1999) *Development as Freedom*, focussed on the relationship between human rights and development defined as the expansion of freedoms and choices.

Relativism i.e. a human right that is a necessity in one culture may be considered a luxury in the other.

The second variant of the luxury-versus-necessity controversy is implicit in the universalism-versus-cultural relativism debate. Many developing countries, especially in Asia, favour "cultural relativism" to contend that human rights are social constructs and therefore they are not universal. That is to say, they do not apply across all cultures in the same manner (Donnelly in Dunne and Wheeler 1999). The conception of the universality of human rights rests on, *inter alia*, the assumptions about needs and capacities common to all (Beetham 1995, 47). The cultural relativists have questioned this assumption on the ground that needs, when defined in terms of human rights, are culture-specific and cannot be determined universally (Donnelly in Dunne and Wheeler 1999). Nevertheless, there is little disagreement on the necessity of certain basic rights such as primary education, primary health care, clean water, etc. Clean water, for example, is a basic need required by everyone to keep themselves alive and enjoy a healthy life. It cannot be argued in this case that Americans need clean water, but Chinese do not.

A specific expression of the cultural relativity of needs is manifest in the Asian Values debate. This debate challenges the universal normative applicability of human rights on the grounds that Asian values are unique, based on diverse sources such as Confucianism and Islam, and therefore, universal human rights cannot be as effective in the local cultures of Asia as in the West (Langlois 2001). This belief is best described in a speech by General Than Shwe, who argued in June 1993 as follows:

The external forces that bear malice towards us are inciting the people by using human rights and democracy as an excuse. The Western countries' human rights and standards of democracy cannot be the same as our Asian standards. We must choose the human rights standards and the democratic path compatible with the tradition of our country and people (Christie 1995, 205).

The proponents of "universalism" assert that all human rights, as defined in various international instruments, are universal and apply to all human beings regardless of their nationality, cultural identity, racial background or development stage (Donders 2002). There exists a vast body of literature that considers cultural relativism as a barrier to harnessing the potential of human rights discourse for bringing about social change and economic progress (see, for example, Booth in Dunne and Wheeler 1999; Merry 2004; UNDP 2000). Merry (2004) extends this argument further and asserts that the developing countries resist the adoption of international human rights law on the pretext of defending traditions or preserving national identities. She contends that culture has to be considered as a contentious domain in which values and practices are debated, contested, and changed. This requires a shift from the present perception of culture as a static space to a more dynamic and fluid set of values and practices.

The cost factor i.e. the protection of human rights requires huge financial resources that only advanced countries can afford.

In addition to the economic and cultural arguments discussed above, financial cost is one of the most contentious issues surrounding the luxury-versus-necessity controversy. Lack of resources is very often cited as a main reason for the failure of developing countries to protect and advance the human rights agenda (Beetham 1995). This facet is concerned mainly with the protection of economic, social and cultural rights. The *Human Development Report 2000*, for example, noted that public spending on economic and social rights was inadequate and badly distributed throughout the world. In the 1990s, annual spending on basic health services in Ethiopia, for instance, was just \$3 a person, only 25 per cent of the level required for the minimum health package. The report further showed that the global shortfall for achieving universal provision of basic services in developing countries (including the transition economies) was \$70-80 billion a year (UNDP 2000, 9).

While the gap in financial resources is acknowledged worldwide, there exist numerous ambivalences in the international response to this gap. The international human rights framework, for example, prescribes a minimum agenda (e.g. universal primary education) as well as a maximum agenda (e.g. higher education). This range of human rights standards is aimed at guiding poor countries to set priorities within a right between minimum and maximum agendas. Beetham (1995) argues that when the resources and capabilities are

limited, a pragmatic approach will be to focus on a minimum core of economic and social rights for everyone in the developed as well as developing countries. This core may include, for example, the right to food of any adequate nutritional value, to clothing, to shelter, to basic healthcare, to clean water and sanitation, and to education at least at the primary level. The lack of resources has reinforced the need for giving priority to basic needs in the international human rights framework.

In the Defence of Human Rights: Two Emerging Challenges

Since the adoption of the UDHR in 1948 and international covenants on human rights in the 1960s, the United Nations along with many other champions has been defending the case for protection and advancement of human rights universally. The struggle against the resistance of some developing and newly industrialized countries, especially in East Asia, on guaranteeing the civil and political rights to its citizens is an important one. In this section, I argue that this struggle is not only going to embrace a new challenge posed by the need for new evidence but it is also entering into the domain of economic and social rights as well, in addition to civil and political rights.

Civil and Political Rights: The Evidence Challenge

The foregoing discussion makes it clear that “the full-belly thesis” takes the centre stage in the luxury-versus-necessity controversy. A key factor which continues to weaken the position of the opponents of the full-belly thesis is some unanswered questions on the history of human rights. The proponents of this thesis assert that Europe had followed the same path during industrialization at the cost of civil and political liberties. They refer to the authoritarian and protectionist policies of the European countries which restricted freedoms and directed resources as deemed necessary to develop industry (Chang 2002). When they achieved sustainable levels of economic growth and high per capita income, their focus shifted to civil and political liberties. The human rights literature does not present a forceful rebuttal of this argument. Whatever intellectual discourse has been shaped on this topic, it has not been adequately integrated into the appeal for human rights.

A more powerful factor which challenged the opponents of the full-belly thesis was the East Asian Miracle. The four “Asian Tigers”, namely Hong Kong, Korea, Singapore, and Taiwan achieved phenomenal economic growth in excess of 6 per cent per year. These growth rates, sustained over a 30-year period, were amazing (Sarel 1996). China was a late entrant into the world of newly industrializing countries as its economy turned around only in 1980. During 1980-90, China’s Gross Domestic Product (GDP) grew at an average rate of 10.3 per cent per year (Srinivasan 2006, 3716). The economic success of these countries gave impetus to the full-belly thesis because they were growing at a very fast rate despite showing a poor record of civil and political rights. According to the comparative and historical data of Freedom House, China lies at the bottom of the index of political rights and civil liberties and has a status of “Not Free”. Singapore, Hong Kong and Malaysia are “Partly Free” on the index. Thus, the necessity of these rights for development and a decent standard of life came under attack from the proponents of the full-belly thesis.

East Asia's economic performance appears to have been the main trigger behind Sen's work on *Development as Freedom* in 1999. This work is cited as a classic defence of the argument that all human rights are indeed necessary and economic rights do not take precedence over civil and political rights. What saved this argument was basically a "twist" of the concept of development. Sen (1999) defined development as a process of expanding freedoms—freedom from poverty, freedom from illiteracy, freedom from illness, etc. In his sense of development, the four Asian Tigers and China had not achieved development at all because the people living in these countries did not enjoy civil and political freedoms.

This concept of development has not moved the proponents of the full-belly thesis in a big way mainly for two reasons. First, the concept of development as freedom tends to disregard the economic progress and prosperity achieved by the East Asian countries over the past three decades. This is something which is obviously unacceptable to the political elite of the East Asian countries. Secondly, in Asian culture, the concept of freedom is associated with the Western conception of human rights and development. Therefore, Sen's definition of development is perceived to reinforce the Western hegemony. Therefore, there is intellectual as well as political resistance to accepting the notion of development as freedom, but only in the local cultural context. In this way, freedom becomes relevant in the sense of Asian values.

These issues are giving rise to a new test for the defenders of civil and political rights, which I call "the evidence challenge". While considerable evidence has been produced to prove the full-belly thesis wrong (Sen 1999, UNDP 2000), there are some fundamental questions which have yet to be answered to make the case for civil and political rights on normative and empirical grounds. If the full-belly thesis is to be proved wrong on normative grounds, then the fundamental question is whether the people in the East Asian countries really value civil and political freedoms. The evidence on this aspect is mixed and scattered. The major source is the World Values Survey and the East Asia Barometer, but their data has not been used well to articulate the normative case for civil and political rights.

On empirical grounds, the case for civil and political rights calls for more evidence on the instrumental role of civil and political rights for the type of development which is valued by the people. Nevertheless, there is already a good deal of literature which proves this relationship. For example, Sen proved that famines do not occur in countries in which freedom of speech and freedom of media are guaranteed. Similarly, Pritchett and Kaufmann (1998, in Schulz 2001) have demonstrated consistent links between the extent of civil liberties and the performance of World Bank supported projects. They estimated that the shift from the lowest levels of civil liberties to the highest level would improve the economic rate of return on the projects by 8 to 20 per cent as a result of the greater voice of citizens in decision-making and freedom in investments. Further evidence suggests that the restrictions on civil liberties and freedoms have coincided with economic stagnation rather than progress. This has been the case in the Philippines under Ferdinand Marcos, India during Indira Gandhi's emergency, and the Soviet Union and Eastern Europe under communist rule (Christie 2006).

What the human rights literature does not prove is a set of fundamental questions which will directly address concerns of the proponents of full-belly thesis. Did the First World countries treat civil and political rights in the same manner during the Industrial Revolution in the 18th and 19th centuries as they demand the developing countries do today? The

defenders of human rights also need to disprove that the conception of freedom being pushed in the international human rights framework is a universal normative concept which did not originate in Western culture. If it did, then the Asians have the right to conceive freedom in the sense of their Asian values in the same manner as they have been conceived in Western culture. The proponents of the full-belly thesis also need to know what the economic growth of East Asia would have looked like had there been a full realization of civil and political liberties.

The need for new evidence has also arisen in the wake of some of the latest international developments. Foremost among those is the recent financial crisis. When the East Asian countries were affected by the 1997 financial crisis, the critics of the full-belly thesis asserted that the crisis had put an end to the Asian values debate (Furuoka 2005). It was argued that their economic growth was not based on a sound foundation due to the lack of a democratic culture and civil and political freedoms and therefore, they would not be able to sustain it. But they did. There has been a reversal in this viewpoint in the face of the recent financial crisis which has shaken the developed countries more adversely. The question for the defenders of civil and political rights is why China and other East Asian countries where these rights are not upheld fully proved to be more resilient to this crisis compared with established democracies of the Western world? Similar questions arise from the recent Arab Spring, which triggered public action in the Middle Eastern countries with poor civil and political records, but did not affect China. This was contrary to the expectations of many political commentators (Schuman 2011). If the case for civil and political rights is to be made successfully, the United Nations and other defenders of human rights will need to take up this emerging evidence challenge seriously.

Economic and Social Rights: The Marketization Challenge

Historically, the notion of “luxury” discussed above has been concerned with civil and political rights only. In this section, I argue that this notion is now extending into the domain of economic, social and cultural rights as well, but with a different meaning, which is associated with common parlance of the word “luxury”. The argument being made here is that basic rights are becoming a luxury in the sense that only rich and well-to-do people with superior market power can enjoy these rights. I call this phenomenon the “marketization challenge”.

The literature has documented the unprecedented spread of the free market economy everywhere in the aftermath of the Cold War, especially in the transition economies of Central and Eastern Europe, the Former Soviet Union and command economies such as China (see, for example, Fukuyama 1992; Falke 2002; Lavigne 1999). This process is accompanied by the rapid growth of the private sector, which is gradually reducing the traditional role of the state as the provider of basic necessities covered by the human rights agenda (such as primary education, primary healthcare).⁵ For example, private schools account for more than 30 per cent of all educational institutions in Pakistan and the rate of

⁵ This topic was the central focus of World Bank’s annual World Development Report 1997.

their growth is much faster than that of public sector institutions (I-SAPS 2010). A similar situation is also evident in health if we look at the share of private health expenditure: all countries 53.6 per cent, low-income countries 63.1 per cent, low-middle income 42.8 per cent, high-income OECD 32.6 (Filmer et al. 1997). Indeed, basic education and health are in large part provided to the poor by private parties (World Bank 2001).

The private sector thrives in a free market economy which is a means of development and represents economic freedom in its own way. The problem is not with the private sector or the free market economy per se, but with the social exclusion that takes place due to inadequate state safeguards to protect the poor and the marginalized. Social exclusion is about the “inability to enjoy social rights without help, suffering from low self-esteem, inadequacy in their capacity to meet their obligations, the risk of long-term relegation to the ranks of those on social benefits and stigmatization” (Robins 1994). Social exclusion from civil and political freedoms is also a key issue (Sen 2000) but it is more acute in respect of the market economy of basic goods and services. Sliver (1994) has identified several categories of groups which face social exclusion; they include, for example, the long-term unemployed, the landless, the low-caste, the mentally and physically disabled, the poor, child labourers, minorities, women, recipients of social assistance.

Economic and social rights become luxuries for those who are unable to purchase the goods and services from the market economy which are needed to enjoy these rights. The literature on social exclusion suggests that the scale at which people belonging to such categories are excluded from basic rights is large, not only in developing countries but also in the developed nations. According to Rene Lenoir, who coined this term, a tenth of the French population was socially excluded (Lenoir, cited in Sen 2000, 1). The evidence on this issue is increasing gradually. Sen has discussed “food battles” in his paper on social exclusion. He argues that when the food supply is constrained, those with superior market power enjoy food whereas others go hungry (Sen 1998, 11). Similarly, in China, the urban poor and rural migrants are being excluded from the market due to the change in their status from being beneficiaries not of the planned economy but of the market economy (Liu, He, and Wu, 2008). In India, the growth of private schooling is perceived to widen the exclusion of scheduled caste children from schooling (UNICEF 1995, 12). These are a few examples from different countries which point to the extent of exclusion from the basic needs to which everyone is entitled under the minimum human rights.

The international human rights framework sets the principle that minimum human rights have to be secured for *everyone* irrespective of circumstances, but at the same time, it accepts market-based mechanisms for securing the goods and services needed to satisfy their basic rights. According to *Human Development Report 2000* (UNDP 2000, 8-9), human rights do not have to be understood necessarily as a claim to free goods or services or a state handout. “Instead, human rights are claims of individuals to social arrangements and policies comprising norms, institutions, legal frameworks and an enabling economic environment, which secure human freedoms. Thus, rights are claims that may be advanced both by the market (housing) and the state (free primary education).” This viewpoint contradicts the principle of securing the minimum human rights agenda for *everyone* irrespective of circumstances because market-based mechanisms favour only those who have the ability to pay. While the problem of equity can be overcome through state regulation, the reality is

that these arrangements are at best embryonic in the developing and transitional countries and do not serve as strong safeguards against the exclusion of certain social groups from enjoying their basic rights in the market economy. This issue poses a serious challenge to the defenders of human rights, as it is giving rise to a perception that the basic needs required to meet the minimum human rights are luxuries which only people with superior market power can enjoy.

Conclusion

This paper has analysed various versions of the luxury-versus-necessity controversy over human rights, which is primarily concerned with the importance of civil and political rights vis-à-vis economic and social rights. The paper argues that the battle between the opponents and proponents of the urgency of civil and political rights is far from over. In particular, two new arenas are opening up, which, if not taken seriously, may undermine the position of the human rights defenders. First, there is a persistent need for the evidence on the history of human rights to be presented in order that the concerns of the East Asian countries can be addressed. In particular, there is a need to answer the question of whether the Western countries advanced civil and political rights when they were developing economically during the Industrial Revolution. At the same time, new evidence is required to defend the case for civil and political rights to explain the adverse effects of the recent financial crisis on the economies of democratic countries and the insulation of China from the Arab Spring. Second, the luxury-versus-necessity debate is taking on a new meaning due to the social exclusion of the poor from basic needs in the market economy. The basic needs covered by the minimum human rights agenda, left to be provided by the free market, are becoming luxuries for those who do not have the power to purchase these needs from the market.

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Save the Children UK (Pakistan)
House 4, Main Road, Margalla Town
Islamabad
ICT
44000
Pakistan
E-mail: sirajmazhar@hotmail.com