

Ethics in Action

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Ethics in Action



ASIAN HUMAN RIGHTS COMMISSION (AHRC)

The cover page is a photograph from Bihar India where children are protesting against the common experience of kidnappings which take place in this state.

(Photo by Reuters)

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Asian Human Rights Commission (AHRC)
19th Floor, Go-Up Commercial Building
998 Canton Road, Mongkok, Kowloon
Hong Kong, China
Telephone: +(852) 2698-6339
Fax: +(852) 2698-6367
E-mail: ahrchk@ahrchk.net
Web: www.ahrchk.net

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Editorial:

Practicing Ethics in Action

Ethics in Action begins with the realization that both law and morality have failed the people of many countries, who are today facing incredible forms of cruelty that they have little power to eradicate. Despite all the rhetoric of empowerment, the reality witnessed in most Asian countries is desperation and powerlessness. The two ingredients necessary for any real empowerment of ordinary people are law and morality. If living conditions are to improve, defective legal systems and the failures of upholding ethics and morality cannot be ignored. *article 2*, a bimonthly publication of the Asian Legal Resource Centre, sister organization of the Asian Human Rights Commission, is devoted to discussing matters relating to defective legal systems obstructing the implementation of human rights. *Ethics in Action* will be devoted to discussing how movements and leaderships claiming to uphold ethics and morality have failed to promote and protect human rights.

A starting point for such discussion can be the link between law, ethics and morality. While the link is in fact important, it is missing in most contemporary literature, whether religious, ideological or legal. Where spirituality meets law is a question that would rather not be answered by both religious leaders and legal practitioners. This means that there are two separate groups dealing with human rights abuses. While the religious/social group is largely concerned with relief assistance, the legal group is focused on legal redress. Relief work and humanitarian assistance alone does not solve the problems that led to the initial need for assistance. Similarly, legal remedies are not always possible without taking care of a person's primary need for sustenance, shelter and care—whether physical or psychological.

Both groups should remember that today's laws are based on the ethics of yesterday. Moral and spiritual convictions regarding feeding the hungry and taking care of the sick must therefore extend to legal and judicial remedies; it is only within the justice system that the basic rights and needs of individuals can be protected. Assisting homeless children should be done not only as a way of discharging moral obligations but as a means to promote the right to housing of all individuals.

Religious leaders, social workers, youth groups and other such organizations play a large role in developing and sustaining a community. They have significant influence and resources within their reach. It is in the hope that these will be used to consistently address the

denial of basic rights to so many persons throughout Asia and the world that the Asian Human Rights Commission is launching *Ethics in Action*.

The first issue of this bimonthly journal begins with the case of Rizana Nafeek, a 17-year-old girl who was sentenced to death after a baby died while she was bottle feeding him. When the case was made public, not only was there a positive response in raising funds for legal fees to appeal her death sentence, but worldwide, groups began to question the conditions of migrant workers as well as the use of the death penalty. An interview with Father Roberto Reyes from the Philippines follows, in which he describes the terrible court delays that plague the judicial system in that country, and the effect of this on one particular case that has been ongoing for the past 11 years. The interview explores possible new approaches to deal with such delays in justice. An article on violence against women in Rajasthan, India describes the conditions endured by women there and how the legal system has failed them. In a subsequent article Basil Fernando discusses the principles and work of the Asian Human Rights Commission in promoting human rights and justice in the region. Jack Clancey illuminates the distinction between priests and prophets, and relates this to emerging civil society groups and actions in Hong Kong and Asia. Finally, some reflections and photographs on contemporary problems in Asia end the issue.

Campaigning for the right to life: The case of 17-year-old Rizana Nafeek

Asian Human Rights Commission

On 16 June 2007, 17-year-old Rizana Nafeek, a Sri Lankan migrant worker, was sentenced to death by a Saudi Arabian high court, for the death of a four-month-old infant in her care. The baby died from choking while being bottle fed by Rizana on 22 May 2005. Rizana was arrested by the Saudi police on the same day and allegedly confessed to the crime; however, in February 2007 she retracted this confession, saying the police obtained it under duress. Moreover, at no time was Rizana given translators or legal assistance. In subsequent hearings the three-judge panel noted that if the dead baby's family were to pardon Rizana, the case would be closed and Rizana would be free. The family refused, leading to Rizana's sentencing in June. Under Saudi law, Rizana could file an appeal against the death sentence within one month; by 16 July 2007.

Surprisingly, this case was barely reported in the Sri Lankan or international press. For this reason, when it initially came to the attention of the Asian Human Rights Commission (AHRC), it came as a sketchy tale. However, the AHRC took up the case purely on the basis of a 17-year-old being sentenced to death, and issued its first urgent appeal. Only later were more details uncovered, through communication with a number of different persons, including the Sri Lankan ambassador to Saudi Arabia.

Eventually it was realized that the crux of the case came down to filing an appeal against the death sentence; if Rizana was to be saved, the next legal step had to be taken. Amongst all the letter writing to the Saudi Arabian government as well as the family of the dead child, it was necessary that concrete steps be taken within the system; filing an appeal. The deadline was looming, and Rizana was unable to lodge an appeal without financial and legal assistance. The AHRC had written to the Sri Lankan government to assist Rizana in making an appeal, which the government claimed it could not do, as it had 'no policy' regarding such matters. When this was made public, several groups contacted the AHRC and expressed an interest in partially covering the legal cost. The AHRC immediately wrote to the Sri Lankan government asking them to engage lawyers, whose fees would be paid through the AHRC. The AHRC then requested persons to donate. Within a short time the fees were collected and legal representation was attained for Rizana, ensuring that

she was able to make the deadline of July 16 for the appeal.

This interest indicated that when people are asked specifically to do things, they are more likely to take an interest in cases. It is therefore useful for human rights groups to move beyond certain self imposed boundaries when attempting to garner support for cases.

It was also important to note that throughout the two weeks in which these events occurred, there was a lot of media support. From the BBC to the International Herald Tribune, from Al Jazeera to local Sri Lankan media, correspondents called up the AHRC and asked for information on Rizana. Other individuals and groups wrote to the AHRC expressing their support. Within a short time, there were 30 000 signatures to an online petition requesting pardon for Rizana. A local petition was later handed over to the Saudi Arabian embassy in Colombo, Sri Lanka with 100 000 signatures. While there was a lot of attention specifically on Rizana, there was just as much attention on the issues of migrant workers and the use of the death penalty. Discussion focused around the Convention on the Protection of All Migrant Workers and Members of their Families, the Vienna Convention on Consular Relations and its Optional Protocol, and previous beheadings of Sri Lankan citizens in Saudi Arabia.

This interest and discussion is ongoing, and the AHRC continues to receive expressions of support towards Rizana.

An appeal to Muslim scholars

(Edited text of two statements issued by the AHRC: AS-155-2007 & AS-169-2007)

The Asian Human Rights Commission (AHRC) is writing to Muslim scholars worldwide regarding the death sentence of a 17-year-old Sri Lankan girl, Rizana Nafeek, in Saudi Arabia.

In the course of Rizana bottle feeding a four-month-old infant, the infant choked to death even as the teenage girl desperately tried to help by way of soothing and stroking the baby's chest, face and neck. Due to misunderstandings, the case was presented as the murder of a baby by strangulation. Subsequently, the judges hearing the case requested the baby's father, Mr Naif Jiziyan Khklafal Otaibi, to use his prerogative to pardon Rizana, but he refused. On this basis, Rizana was sentenced to death by a Saudi Arabian court on 16 June 2007.

After careful consideration of all the facts, the AHRC is of the view that the baby's death was a terrible tragedy, but current events are leading to a further tragedy: the execution of an innocent, inexperienced teenager.

Scholarly considerations can help to make the necessary reflections distinguishing a tragedy from a crime, and from such reflections interventions can be made to prevent a further tragedy. We encourage Muslim scholars to communicate with this unfortunate family and provide them with the necessary counsel and support so they may deal wisely with the case.

While the AHRC is experienced in common and civil law jurisdictions, the same cannot be said of the Islamic legal system. To deepen our knowledge and understanding regarding the operation of Islamic laws in Rizana's case as well as overall, we request Muslim scholars to consider the following issues:

- a. How would complaints of causing duress to obtain a confession be examined in a Saudi Arabian court? Under both common and civil law procedures, such a complaint would be separately examined, and if the court was satisfied that the complaint is true, no importance is attached to the confession. The court will then decide the case on the basis of whatever other evidence is available.
- b. How would a Saudi Arabian court treat new information which could have a significant influence on understanding the issues relating to the case? For instance, if it is revealed that the actual age of the accused is 17, and not 24 as originally claimed, would the court re-consider its verdict, taking into account any implications arising from this new information?

- c. How would mens rea, or the mental element in crime be examined in a Saudi Arabian court? According to both common and civil law systems, the intention to cause the crime is an essential ingredient of the crime itself, and sophisticated jurisprudence regarding this exists. What is the counterpart in Islamic law?
- d. What is the manner in which guilt is determined and the proportionality of the punishment measured under Islamic law? Again, common and civil law jurisdictions have seen centuries of debate on these matters and certain basic principles have become the norm in all courts.
- e. What importance would a Saudi Arabian appeals court attach to the absence of legal representation during trial? It is now customary in common and civil law systems to consider the issue of legal representation as an essential element of a fair trial, particularly in cases carrying serious sentences such as the death penalty. An appeal court in either system may set aside the decision of a trial court if the accused was not provided legal representation. In fact, courts are also taking the stance that if legal representation was provided but it was inadequate - for instance the lawyer was patently incompetent - there is a strong ground for appeal. How are such matters considered within the Saudi Arabian legal system?
- f. How does a Saudi Arabian trial or appeal court consider the issue of persons who are aliens to the country, who are unfamiliar with the culture, laws and legal practices of the country of residence? In common and civil law jurisdictions it is now a recognized duty to provide services which enable such persons to participate in the trial process with full comprehension and dignity. Any failures in this regard would be considered as flaws in the trial, giving rise to reasonable grounds for appeal.

The AHRC invites scholars and practitioners to express their views on these matters by writing to ahrchk@ahrchk.org. Those wishing to offer their advice to the family of the deceased child may do so through the following address c/o the Sri Lankan Embassy in Riyadh, Saudi Arabia:

Mr Naif Jiziyan Khklafal Otaibi
Ministry of Finance, Riyadh
C/O Sri Lankan Embassy
PO Box 94360
Riyadh 19693
Saudi Arabia
Email: lankaemb@shabakah.net.sa, amjsadiqu@hotmail.com

Court delays and the Abadilla Five: A discussion with Father Roberto Reyes

Editor's note: Background information regarding the Abadilla Five case is provided at the end of the article.

On 20 July 2007, Basil Fernando, Executive Director of the Asian Human Rights Commission (AHRC) and Asian Legal Resource Centre (ALRC), Hong Kong, met with Father Roberto Reyes, also known as the 'running priest' to discuss court delays in the Philippines.

Basil Fernando: Please describe the situation of court delays in the Philippines and how this has affected the Abadilla Five case.

Fr. Roberto: It is crucial that a case like the Abadilla Five should have a favorable resolution as early as possible. If not, time becomes your enemy in the Philippines. The longer a case drags on, the less people are interested in the case. There are several landmark cases, very important in terms of history and renewing the justice system, which remain unsolved. There is a deliberate attempt within the Philippines' judicial system to delay cases until people forget about them. It is a very different situation than what you would find in certain societies such as Hong Kong perhaps, where cases are tried as quickly as possible, but not haphazardly.

In the Philippines you have two problems. First is the problem of legal mechanisms that delay the case until it simply dies in the public mind. When a case is dead in the public mind, you may still have victims who are innocent, who are very much alive, but they are forgotten by the people. So no matter how difficult it is, for the last eight years - I got involved in 1999—every year, year in and year out, I remind people that the Abadilla Five case is not solved, that there are innocent men blamed for something they never committed, and that the flaws of the legal system condemned not only the five men, but all of us. And this will repeat itself, and it does repeat itself. It is therefore necessary to study the legal mechanisms that institutionalize historical murders.

The second problem is that activists during President Marcos' era (1965-1986) were very important in elevating the discourse on human rights and keeping it relevant. Unfortunately, the human rights discourse in the time of President Cory Aquino (1986-1992) started losing steam, and Cory herself did not pursue human rights.

Basil Fernando: Can you elaborate a little on the mechanisms of delay that you mentioned.

Fr. Roberto: One mechanism of delay is that judges—including those of the Supreme Court—are pressured by politicians to sit on a case. In this way, cases become political; there is an interplay between the legal and the political, between the justice system and the executive.

Basil Fernando: So delays are due to deliberate pressures?

Fr. Roberto: Delays are also the result of a very inefficient justice system. It is quite possible that you will have a case where nobody is deliberately delaying it; many cases are just shelved or put under files. But in the case of the Abadilla Five, the inefficient justice system and political elements are both contributing to its very, very disturbing delay.

Basil Fernando: Please explain the ‘inefficient justice system’.

Fr. Roberto: The watch of Abadilla was given to me by those who claimed that they had murdered Abadilla in December 1999. I presented it to the court in January 2000. The judge practically insulted me in court, he made fun of my presentation and he even sang a song to undermine and trivialize the issue. Of course, no one could hold the judge in contempt in his own court. I was in court because of something very serious—the watch that belonged to the man they murdered—not trivial, but it was trivialized by the judge. It is shocking to see the judge himself behave in such a manner, and it forces you to question what is wrong with the justice system. I have seen this happen in other cases as well.

Basil Fernando: So you are saying that when applications are made by individuals or lawyers for particular decisions, such as the speeding up of cases, the judges act, directly or indirectly, in a manner that trivializes the issue.

Fr. Roberto: The person primarily responsible for the arrest of the Abadilla Five was Senator Robert Barbers. To impress his boss, President Fidel Ramos, Barbers boasted that in three days he would solve the case. And so within 72 hours Barbers presents five men to the media and says this case is solved. How can you say that without any proper investigation or trial, how can you arrogate yourself as judge and jury; what then is left for the courts? This man used the Abadilla case for his senatorial campaign, won as senator and was still a senator in 2000. When new evidence was presented to the judge at this time, Barbers’ camp vigorously opposed the reopening of the case because it would be an embarrassment. At the same time, Abadilla’s family also did not want the case reopened for various reasons: perhaps they were tired, they just wanted to dismiss the whole thing, or because it might open a can of worms due to Abadilla’s role in other cases.

So the judge is aware that influential politicians are watching his every move. Under these circumstances, is he likely to decide judiciously or politically? By dismissing my evidence as hearsay simply because I don't belong to the group that claims responsibility for the murder, it was very clear that the judge betrayed his sacred duty to uncover the truth.

Basil Fernando: In a properly functioning court set up, for instance in Hong Kong, if you came out with that statement and brought the watch to court, the first thing the judge would do is to order the police to take your statement. Secondly, he would order further investigations to be conducted and for the police to submit new reports. Based on these, he would decide how to proceed with the matter. In other words, your application will be treated seriously. In your case this didn't happen; the judge did not take his obligations seriously.

Fr. Roberto: Indeed. With five innocent men and a public clamor to know the truth, his obligation should have been obvious. But perhaps the clamor was not strong enough.

Basil Fernando: You mentioned two very important things: the role of public or political pressure in judicial delays and the habit of judges to trivialize matters. Do you see these two things as being related?

Fr. Roberto: They are certainly related, which is why people are asking how many decent judges we still have if most judges buckle under political pressure or even public outcry. For instance, judges who, in order to become famous at the height of the death penalty debate, would sentence people to die and even rush a sentence of innocent people in order to gain mileage for themselves. It is not simply enough to have public outcry because the public also needs to be informed and educated. During the death penalty debate there was an enormous outpouring of protest with many people just asking for blood.

In the case of the Abadilla Five we have been giving the public as much information as possible, convincing them that these are five innocent men, however, it is not creating enough indignation. Thanks to the media, people are slaves to sensationalism. For them to react, we have to make a case quite scandalous and exciting. But how do you make an 11-year-old case exciting to people? In fact, if a case starts getting old then the culprits are happy. The longer the case takes in the Philippines, the greater the chance people will forget about it and the truth will die.

Basil Fernando: There was quite good media coverage in the case of the Abadilla Five, and yet it was not enough to make an impact. Why do you think this is?

Fr. Roberto: As I said, there are political obstacles. Senator Barbers boasted to his boss, President Ramos. Barbers recently died of cancer but Ramos is still alive. Ramos worked

with Abadilla: does Ramos know anything about why Abadilla was put away? What if he knew? And if he knew would he want a reopening or would he want the status quo?

Basil Fernando: Is it just political influence that causes delays, or is there something problematic with the system? When judges are afraid to touch on sensitive cases, is it a fear built into the judges?

Fr. Roberto: Judges are afraid because of what is already built into the system; the unspoken law of corruption. A large number of judges can be bought. Courts in the Philippines are not courts of truth, but courts of bank accounts. Moreover, judges can be promoted or demoted. If a judge is looking upwards in his career, towards the court of appeal or the Supreme Court, he will be very careful as to who he antagonizes. He will act favorably towards a case if it can help his career. There are very few judges who will lay their future and their names on the line for the sake of justice. There are good judges, but not enough of them to swing the balance in a different direction.

Basil Fernando: In countries with functioning justice systems, various procedures and remedies exist to counteract any weaknesses of judges. With the assistance of lawyers, individuals can make use of these remedies. Why have these not developed in the Philippines?

Fr. Roberto: There can be little possibility for remedies when the system of corrupt judges and political appointments is so deeply entrenched. Even if there were remedies that an aggrieved party resorts to through a lawyer, poor people can't pay the counsel fees. In the case of the Abadilla Five, there are very generous people but they also have to look for their own bread and butter. They cannot pursue the case persistently because they are just pro-bono. If you have a case where people cannot pay the legal fees even the best-hearted lawyers cannot say how long their commitment can be sustained.

Basil Fernando: If substantial contributions were made to retain powerful lawyers do you think that this case can be expedited?

Fr. Roberto: Yes, I think it can be expedited. At present, it is not the well known and influential legal firms who are pursuing controversial cases. It is the human rights pro-bono volunteers, such as the Free Legal Assistance Group (FLAG), who are pursuing controversial cases of the poor. They try their best, but they have to practice law elsewhere to survive. They can only contribute their spare time after office hours to work on these cases.

Basil Fernando: In your opinion, what would be the cost of retaining a more powerful lawyer?

Fr. Roberto: About US\$ 40,000. In the Philippines, fighting a legal case takes up millions of pesos. An acceptance fee—paid just for the act of retaining a lawyer—ranges from 50-100,000 pesos. Once they sign the contract there is the per diem, and thereafter every court appearance has to be paid for. Moreover, if it is a civil case the legal firm will collect a sizable percentage of the damages awarded to you. Good firms will take the money and then push through the case. But it is all about money.

Basil Fernando: So it can be argued that one of the reasons for this case to be delayed is because the people are poor and unable to retain a powerful legal firm.

Fr. Roberto: It still remains to be seen whether the Abadilla Five case will flourish if it is handled by an influential and well known firm. We are assuming that if there had been such a firm, this case would probably have been reopened in 1999. Whether it would have made a difference, I don't know. Another question we must think about is whether such a firm will remain independent while pursuing the case. Will political and other factors not come into play to put them in their proper place? Unfortunately in the Philippines, a lot of these legal firms are also controlled by politicians because a good number of senators used to be in legal firms. At the same time, it is difficult for the case to stay in the public mind when it is a well intentioned but unknown lawyer pursuing the case, who does not have the means at his disposal to dedicate all his time and energy to a particular case.

Basil Fernando: Let us explore how the present lawyers can be assisted and the case expedited. One option is to see whether a public defender would take the case, given that private lawyers are already engaged and that public defenders are state recognized. Another option is to look for a legal firm willing to take up the case. What is your advice?

Fr. Roberto: My advice would be to consult with the Abadilla Five lawyers in the Philippines and find out who among the respectable law firms could be asked to help. They are in a better position to know which firms would not ask for a large fee and still do a good job until the five men are exonerated. I think such a collaboration would work.

Basil Fernando: When there are certain local problems standing in the way of justice, such as a lack of resources, various forms of lobbying can be undertaken to overcome them and to develop a practical strategy towards justice. In this case, if we could raise the funds for legal fees, what would be your next step?

Fr. Roberto: As I said, I can talk to present lawyers and tell them to start looking for a decent law firm that can really pursue this case until it's over in their favour.

Basil Fernando: What we are trying to do is not just help in this case; I am trying to give you a different strategy from sensationalizing. Sometimes people go for sensationalism

simply because they don't know what else to do. They publish the whole story and expect that some public reaction will come. It is like the case of the Sri Lankan girl, Rizana Nafeek, who was sentenced to death in Saudi Arabia. The Sri Lankan government was not willing to provide the legal cost for an appeal, so we raised the money. If we had not done so, the deadline for the appeal (16 July 2007) would have passed, and one day she would have been beheaded. And everyone would then lament her death.

Fr. Roberto: But lamenting is not enough, the point is to have done something. To have exhausted all means available in order to save an innocent life. In the Philippines human rights groups are burdened with a large number of case review requests in instances of innocent people being condemned. The volume of cases is simply too large however, and judges are wary of setting a precedent by resolving the cases.

Basil Fernando: Perhaps, but the actions are also symbolic. If you take a strong step once, in other situations that step will be remembered and others will take it as well. Sometimes human rights organizations are hesitant to explore new avenues, or worried that if they take on something once, they may have to do so again and again. But that is not the case: just because we took Rizana's case does not mean we will take on other cases. Now there are others who know what to do; today I will do it, tomorrow someone else will do it. We must try the same strategy in the Abadilla Five case.

Fr. Roberto: We need a law firm that is respected, a firm that can engage with the Supreme Court and Chief Justice if necessary.

Basil Fernando: So can you spend the next week trying to talk to some people and to come up with specific suggestions? Then we can take the suggestions to other people and in this manner evolve a strategy to expedite the case. In particular, we must view the case from a systemic angle. After Rizana's case for instance, we have created a huge impression in Sri Lanka; unlike all the rhetoric and media sensationalism created by others, we took some concrete action to move the case forward. This has caused significant embarrassment to the government as well, with everyone asking why the government did not cover the legal fees.

Fr. Roberto: I will look for more people to come on board for the Abadilla Five case, and for a respectable firm to work with the current lawyers and volunteers so that we stand a better chance.

Background information: Abadilla Five

The Abadilla Five are five men who were arrested for fatally shooting Col. Rolando Abadilla of the former Philippines constabulary, and allegedly a feared hit man of the

Marcos regime, on the streets of Quezon City in Metro Manila on 13 June 1996. The five men - Lenido Lumanog, Augusto Santos, Cesar Fortuna, Rameses de Jesus and Joel de Jesus - claim that after being suffocated with plastic bags, electrocuted and brutally beaten they confessed to Abadilla's murder. Judge Jaime Salazar of the Quezon City Regional Trial Court, however, ignored the arguments of the five men that they had been tortured into confessing to this crime, and they were subsequently convicted and sentenced to death in August 1999.

Several months later the Alex Boncayao Brigade, an urban guerrilla group of the New People's Army, announced that they were responsible for killing Abadilla, and one of their members gave an Omega watch allegedly taken from Abadilla's body to a Catholic priest, Father Roberto Reyes, to prove they were responsible for his death. However, the court failed to reopen the case and entertain this new evidence, as well as ballistics data that indicated that the bullets at the crime scene matched those used in other killings acknowledged by the group.

In February 2000, the Supreme Court began a mandatory review of the case as required in capital punishment cases. Nearly five years later, in January 2005, the Supreme Court transferred the review to the Court of Appeal where it languishes today, more than 11 years after the arrest of the five men.

Meanwhile, an investigation conducted by the Commission on Human Rights in June 1996 confirmed that the Abadilla Five had indeed been tortured, and recommended that criminal charges be filed against the police officers responsible. State prosecutor Marilyn Campomanes of the Office of the Chief State Prosecutor was assigned the case; but after five years, her preliminary investigation had not yet been concluded. Finally, in August 2001, the prosecutor's office dismissed the torture complaint on the rationale that the case was still being reviewed by the country's highest courts.

Chastity belts and other violence against women common in Rajasthan, India

Asian Human Rights Commission

(This is the edited text of a statement issued by the Asian Human Rights Commission: AS-180-2007)

When a lady was found bleeding from her thighs in a public bus in the north-western Indian state of Rajasthan, her fellow passengers took her to a hospital. The doctors who examined her found she was wearing a chastity belt; the bleeding was a result of injuries from the belt.

Rajasthan is known to be one of the prime tourist destinations in India. What is not known however, are the horrifying conditions of the women living there. The state, well known for its tourist attractions like the ancient forts and the Rajput culture, is a graveyard of women's rights. The practice of forcing women to wear a chastity belt is so common in Rajasthan that a website hosting advertisements of Indian industries boasts various designs of chastity belts, including those made from precious metals like gold and silver.

Forcing women to wear chastity belts is only one indicator of the violence against women exercised in Rajasthan. The demand and acceptance of dowries is widespread in the state, in particular amongst the middle class. Even highly educated women are married off to strangers against their will. One of the well known women's colleges in the state has a considerable number of dropouts in its higher degree courses, because the students are forced into marriages before they complete their studies. Once married, the woman is expected to remain at home and is confined to the four walls of her husband's house. Higher education for women is only considered useful as a means to bargain for less dowry.

The Dowry Prohibition Act of 1961 prohibits the demand and acceptance of dowry in India. For the Act to be implemented and the practice of dowry to be rooted out however, what is needed is a functioning policing and criminal justice system. In a state where women are valued at par with cattle, the execution of the Act has clearly failed. The

records of the National Crime Records Bureau speak for themselves: cases registered against the practice of dowry in Rajasthan are relatively low compared to the cases of violence against women reported across the country.

The Rajasthan legal system does not consider verbal, emotional and physical abuse of women within the home criminal acts. In fact, courts reject complaints filed by women on the grounds that a woman does not have the right to complain, particularly if the complaint is against her husband or relative. Inevitably, this encourages further abuse.

Women are often compelled to engage in drug trafficking and prostitution in Rajasthan. These women are abducted from rural villages at a very young age, trained in distant places and later forced into active service. Those who get caught by the law enforcement agencies at a later stage in their 'career' end up in state prisons without any recourse to legal or medical aid. Many are raped in custody. Not being able to complain about their situation, they end up as carriers of life-threatening and other sexually transmitted diseases.

The common excuse for the dismal condition of women in Rajasthan is the society's feudal mindset. While such a mindset does exist, the true blame for the uninterrupted violence against women lies in the failure of the state's law enforcement agencies to maintain effective rule of law. The police in Rajasthan are largely controlled by local political leaders. These leaders propagate an interpretation of Hinduism that denies women an equal status in society; women have no rights other than those granted them by their husbands. Under such inane misapprehensions, police blatantly refuse to register complaints by women. The few women who persevere are referred to the political leaders, and such referrals usually result in further abuse, often in public. This serves as a powerful deterrent to other would be complainants

Continuing violence against a particular sector of society does not happen in a vacuum. Together with a politicized and corrupt police force, Rajasthan's justice system also includes a non-independent judiciary. These provide the legal sanctions for barbaric crimes against women. The religiously charged political ideology leading the state administration is just the veil covering a collapsed system that allows women to be persecuted within the confines of their own family.

Ethics in action: Defending the right to life & article 2 of the ICCPR

*Basil Fernando, Executive Director,
Asian Human Rights Commission &
Asian Legal Resource Centre*

I. Normative frameworks and successes

A matter of ethics

The Asian Human Rights Commission (AHRIC) and its sister organization the Asian Legal Resource Centre (ALRC), are primarily concerned with premature and preventable deaths caused by human rights violations. Protecting life is a central matter for ethics and morality. Human rights related actions - whether regarding civil and political rights, or economic, social and cultural rights - must deal with this ethical and moral issue on an urgent basis.

In most Asian countries the lives of thousands remain trivial and cheap, and there exists a certain acceptance of this situation. A short survey of contemporary Asian history reveals millions of deaths due to brutality and human rights abuse: whether caused by the Japanese military in World War II, or the partition of India, Pakistan and Bangladesh, or during the 1965 Suharto takeover in Indonesia, by American bombing and the Pol Pot regime in Cambodia, deaths during the Chinese Cultural Revolution, by military and authoritarian regimes in countries such as Burma, Pakistan, the Philippines, Nepal and Sri Lanka, or deaths caused by civil wars - with and without involvement of foreign powers - in virtually every country in the region. A large number of deaths have also occurred in the wake of poverty, natural disasters and discrimination. Caste discrimination in India for instance, involves the abuse of economic, social and cultural rights as well as civil and political rights, and affects over 25 per cent of the country's one billion-strong population.

Promoting the right to life and associated moral issues are the focus around which a moral discourse can take place. It is important that such a discourse actively recognize the duties of various parties: the duty of the people to participate in social discourse, the duties of the state towards its citizens, and the duties of the state and civil society together to prevent outside influence that may bring death and destruction, while cooperating with those promoting the right to life.

Division and conflict however, exists amongst those participating in such discourse, because there are those with amoral approaches to life; to community organization, social organization, political organization and economic development. Such amoral approaches create obstacles to the incorporation of a moral basis for community life and organization. Sadly, these approaches have been at the heart of Asian deliberations on social, political and moral philosophy. They have found expression in recent years through the Asian Values debate, and most recently in the terrorism and anti-terrorism discussions. It is in this tense atmosphere of moral conflict that a human rights organization has reason to rearticulate its aims and reshape its strategies.

Shaping the vision

The Asian Human Rights Commission (AHRC) was started in 1985, at a time when Asia was governed almost exclusively by various forms of dictatorships or authoritarian regimes. In fact, authoritarianism was seen in Southeast Asia as a requirement of economic progress. Authoritarianism came together with harsh national security laws, the widespread practice of torture, extrajudicial killings, illegal arrest and detention. Under this harsh political climate, a small group of prominent persons—mainly jurists—including senior judges, lawyers and academics, came together and formed a regional base from which to offer support for local struggles to protect human rights that were going on at the time. This was the beginning of the AHRC. Its aims are:

- Protect and promote human rights by monitoring, investigation, advocacy, and solidarity actions;
- Work towards social equality, with particular emphasis on social groups who have suffered discrimination in the past, such as women, children and minorities, including Dalits;
- Develop a speedy communication system using modern technology to encourage quicker actions to protect human rights, redress wrongs and prevent future violations;
- Develop appropriate modes of human rights education, and in particular, promote the 'folk school' approach;
- Promote appropriate legal and administrative reforms, particularly judicial and police reforms;
- Develop close links with victims of human rights violations in order to promote solidarity with victims, to preserve the memory of the victims and to organize significant commemorations linking large groups of people;
- Participate in peace making, reconciliation, conflict resolution, truth commissions and international tribunals;
- Develop cultural and religious programmes for the promotion of human rights;
- Encourage ratification of international treaties, and the development of local legislation, law enforcement and judicial practices in keeping with such treaties, and assist the formation and functioning of national human rights commissions;
- Promote the United Nations, particularly its human rights agencies, and assist

organizations and persons in Asia to utilize these agencies for better promotion and protection of human rights within the region;

- Work towards the development of regional human rights mechanisms and encourage people's participation in this process by promoting the Asian Human Rights Charter.

In keeping with the above aims, the AHRC's programmes were guided by the following approaches:

- A victim centered approach combined with structural reforms in promoting and protecting human rights;
- Protest work combined with a community based approach; priority is to be given to the building of a support base in church and religious groups;
- A UN-directed approach combined with regional and country based human rights promotional activities;
- Human rights promotion must be combined with the promotion of democracy and rule of law;
- Issues of poverty eradication, gender equality and minority rights (including indigenous peoples and Dalits) must be incorporated into all programmes.

By 1993–4 the AHRC had done a considerable amount of work and gained valuable experience. The 1993 Vienna Conference on Human Rights brought a new global vision for human rights. In light of this new vision, the AHRC began to redefine its perspectives and deepen its interventions. Changes in global communication were also opening new avenues for overcoming old obstacles facing the human rights movement. Work towards this end began with extensive efforts to write the Asian Human Rights Charter - A People's Charter. It took four years of intense effort, with numerous consultations in different countries. The Charter was declared on 17 May 1998, at Kwangju, South Korea.

That a 'thousand flowers may bloom', is the spirit in which the ASIAN HUMAN RIGHTS CHARTER—A People's Charter is offered. That there should be a state-sponsored human rights charter and that this would come about only through the efforts of the Asian people themselves are two premises that have been discussed by many persons and groups for over a long period of time. The reluctance and even the resistance of the Asian governments to discuss and agree on a human rights charter is well-known. In fact, Asia is the only region in the world where several governments have raised an objection to human rights on an ideological level. The 'Asian Values' debate is quite well-known.

In this context the resistance to the ideological stance of the Asian governments against human rights has been led mainly by the Asian people's organizations, NGOs and intellectuals. For people to express their views no authority need to be taken from the state. People's autonomy and the autonomy of the civil society are fundamental ideas and do not depend on any need for an authority. Moral conviction is the only authority on which the people's expression of opinions is based [<http://material.ahrchk.net/charter/>

mainfile.php/declaration/86/].

The purpose of the draft declaration of human rights is to initiate a discussion throughout Asia, regarding some of the most fundamental issues relating to the concept of human rights, as well as problems relating to the enforcement of human rights. On an initial consultation held at the beginning of 1994, the participants from several countries reflected on the basic issues that should be reflected in an Asian charter of human rights. It was felt that the draft need to reflect closely, the aspect of violations of human rights that are taking place in almost all countries of Asia and that it should concentrate on the aspect of the enforcement of human rights. On the basis of recommendations made at this consultation, a questionnaire was drafted and distributed to many Asian NGOs calling for their contributions to be included in the draft declaration. Over 100 NGOs responded to this call and sent in many documents relating to various problems of human rights, that they faced in their countries. After making a summary of the documents sent by the NGOs, the drafting committee consisting of 6 persons met for the purpose of making the first draft. After 3 consultations, the draft was finalized. After further consultations it was adopted [http://material.ahrchk.net/charter/mainfile.php/draft_charter/29/].

The basic theme of the Asian Charter is the right to life.

3.2 Foremost among rights is the right to life, from which flow other rights and freedoms. The right to life is not confined to mere physical or animal existence but includes the right to every limb or faculty through which life is enjoyed. It signifies the right to live with basic human dignity, the right to livelihood, the right to a habitat or home, the right to education and the right to a clean and healthy environment for without these there can be no real and effective exercise or enjoyment of the right to life. The state must also take all possible measures to prevent infant mortality, eliminate malnutrition and epidemics, and increase life expectancy through a clean and healthy environment and adequate preventative as well as curative medical facilities. It must make primary education free and compulsory.

Besides producing the Charter, the various Asia-wide consultations generated several activities, campaigns and a large network. Through these, the AHRC developed the following programmes:

- Urgent Appeals
- Legal and Judicial Reform
- Human Rights School
- Specific country programmes for China, Cambodia, Sri Lanka and other country-based programmes
- Lobby programme in United Nations human rights agencies (ALRC has General Consultative Status with Ecosoc)
- Publications
- Religious Groups for Human Rights

- Internships
- World-wide web communication network

The AHRC is involved in the following major campaigns:

- Against disappearances
- Against torture
- Against caste discrimination (Dalits)
- Against food scarcity in Burma
- Against national security laws in several Asian countries
- For judicial reforms
- For development of both civil and political rights as well as economic, social and cultural rights throughout the Asian region

All of the above campaigns and programmes involve working together with many other civil society and non-governmental organizations. Working with different groups and reaching a large audience has become easier with modern communication systems. The Urgent Appeals programme, for instance, has the widest network in Asia, reaching over 200,000 contacts through email. In this way, monitoring and lobbying work has been refined to a sophisticated level, taking into account recent changes in international lobbying.

Broadly speaking, there are three kinds of changes. Firstly, in the past lobbying at international forums was limited to a few persons due to travel costs. These persons were seen as representatives or at least voices of larger groups, and even with relatively little contact with people directly working on or affected by these issues, this group had an extraordinarily dominant role in lobbying. Advances in communication technology have made such lobbying unimportant and often counter-productive; it is now possible to lobby without traveling long distances, and it is also possible for larger groups of affected persons to make themselves heard directly, with limited help from intermediaries.

Secondly, the direct targets of past lobbying were foreign diplomats from various countries, together with other foreign officials; these persons were met once or twice a year at international meetings. Modern communication however, offers the possibility of corresponding with all such persons more regularly, even weekly. Direct physical lobbying is now supplementary to regular information sharing. Frequent communication and monitoring also makes it easier to challenge government positions based on moral and other principles commonly accepted by the international community.

Thirdly, and perhaps more importantly, the diplomatic community is no longer the main target of lobbying; it is civil society whose help is sought. The strength of civil society action was seen in the struggle against apartheid and landmines, as well as the fight for the protection of women's and children's rights, even before critical changes in communication systems. Educating civil society in all countries regarding issues that they have no direct

experience of, is therefore a *sine qua non* of effective lobbying. Civil society must be encouraged to express solidarity with movements in other countries, as well as to hold their own governments and diplomats accountable for their actions at home and abroad. In particular, government representatives at international meetings must be held accountable.

Another effective way to reach a large audience is more symbolic, such as the building of public monuments, or other forms of art. In Sri Lanka for instance, the AHRC sponsored a well-known monument commemorating disappearances.

The purpose of all these activities has been to generate debate and discussion on contemporary problems facing the human rights movement in Asia. In generating such discussion, the AHRC has relied heavily on the ideas of the Danish Folk School movement, in particular, the work of NFS Grundtvig, a Danish Bishop, writer, poet and founder of the folk school movement. Central to this movement is the primacy of ordinary folk—rather than the elite—in the democratization process. Following from this is the importance of social discourse on all issues, particularly on moral and ethical concerns. Though there is much to improve, a significant beginning has been made in creating such discussion locally, regionally and internationally. A new model for doing human rights work has been introduced and is now being used by several other groups.

II. Trade-offs and compromises

Potential conflict: Civil and political rights versus social and economic rights

In the AHRC's experience, this conflict between the two sets of rights is often exaggerated. Such exaggeration however, can be very dangerous, particularly in Asia's developing economies. As early as 1995 AHRC pointed out that

In Asia, the violations of civil and political rights are deeply linked with violations of economic, social and cultural rights. To illustrate, an expert trying to help tribal people may himself be tortured, imprisoned, or even assassinated due to his work. Someone who conducts an employment training course for women below the poverty line may face the same fate. A husband who protests against professional negligence or lack of medical facilities that led to his wife's death during childbirth may end up in a prison without a trial for a long time. One who works for basic wages and working conditions in free trade zones; one who helps a group of peasants to get a fair price for their vegetables and other products, or tries to highlight the suicides of peasants due to unfair loans; one whose work is related to environmental rights, women's rights, rights of dalits - so called low castes; a lawyer who promotes due process as against corrupt police officers or even the one who tries to spread literacy among the poor may be engaging in activities forbidden in their societies and therefore may lose their civil liberties. Once these two aspects of human rights are de-linked, we may be talking about any other place but Asia.

Protest, agitation, and teaching of human rights norms contained in the UN charters are not the only legitimate activities of the human rights movement. Achieving social changes on the basis of building consensus is an integral part of the work of the human rights movements. Here lies the real link between economic, social and cultural rights and civil and political rights [<http://www.hrsolidarity.net/mainfile.php/1995vol05no02/82/>].

The supposed conflict between these two sets of rights is therefore relative to the organizational approach. If your central concern is with structural reforms to enable the realization of rights, the area of conflict is very much less. My view is that this conflict may be relevant to old models of human rights work. Some organizations have mandates that limit them to one particular set of rights. The AHRC's mandate encompasses all rights.

Potential conflict: Rights-oriented approach versus humanitarian care oriented approach

In discussing this question I want to focus on the language that surrounds these two different approaches. We should remember that discourses in different countries take place in different dialects, not only in English. Some difficulties that present themselves in English do not appear the same way in some other languages. AHRC has found that suitable ways to promote human rights can be found only when one consults local partners, who are sensitive to local threats and difficulties, and have appropriate forms of expression.

Conflicts between different approaches to human rights that apparently founder on language are not so much ones of expression but are rooted in the alternative approaches to fight causes of human rights violations in a particular country or a situation. When alternatives are worked out with a good grasp of human rights principles, exciting new paths open in which the strict use of the usual human rights jargon becomes irrelevant. AHRC's experience is that working out the details of a human strategy helps in resolving communication problems over alternative approaches. The more concrete the actual proposals become, the more easily the message gets communicated.

Sometimes symbols work more effectively than language. For example, in Sri Lanka AHRC took the initiative to build a monument in a busy public place. Three such monuments have now been put up in the course of two years and they have drawn much public attention. One is a monument to disappeared persons. Near a highway, on a wall known as 'The Wall of Tears', are pasted pictures of about 300 disappeared persons. In front of the wall is a sculpture made by a reputed artist, hollowed out to indicate the figure of a missing person. The recommendations of the UN Working Group on Disappearances to the Sri Lankan government are exhibited in front on a stone plaque. This monument has resulted in greater discussion on disappearances than any book or document could have provoked.

The second monument is for the well-known Catholic priest Michael Rodrigo, who was assassinated while working in a remote village in Sri Lanka, fighting for the issues concerning the rural people. His struggle emphasised economic, social and cultural rights, and so he came into conflict with some of the local elite who were collaborating with big companies to exploit resources in the area. It is suspected that among them some used their influence with the military to have him assassinated in November 1987, during a period of large-scale disappearances.

The third monument is to remind the public of the Universal Declaration of Human Rights (UDHR). “Let us implement the rights declared in the UDHR” is the message. It is erected in a prominent place in Colombo, the capital. It exhibits a summary of the basic rights mentioned in the UDHR in the three languages used in the country. All these are attempts to go beyond the boundaries of language. Central also to AHRC’s work is the Folk School concept, which emphasizes the primacy of the spoken word over the written word:

The first tenet of [N.F.S.] Grundtvig’s new enlightenment can be summarized in the expression “the living word” (*det levende ord*). Down through all the ages of history, it was the words that men actually spoke, the words that came from their lips, that had revealed and constituted the essence of their being. Without this spoken word, there could be no life. He saw himself as having been a “book worshipper” in the past, as having lived too much of his life inside the yellowing and withered pages of a book. Yet books had to be regarded now as secondary. His new revelation demanded an emergence from the frozen darkness of print into the bright sun of the living word. This new doctrine for schooling and education would have profound implications [Stevan M. Borish, in Fernando, *Demoralization and Hope*, p. 49. 6].

All these approaches have helped the AHRC to address the issue of language in a different way, and hence adopt a different approach to human rights advocacy work.

Potential conflict: Familiar and reliable personnel versus local personnel

I am personally aware that this problem exists for those working in UN agencies, however AHRC does not have this problem as we work intimately with local personnel of our choice and training. Thus AHRC does not distinguish between US and THEM.

Potential conflict: Catering to funding agency interests versus catering to local needs

Once again AHRC is for the most part free from this problem, due primarily to our emphasis on finding solutions to local problems by evolving locally relevant approaches. The Asian Charter project, which took several years, brought home to funding agencies AHRC’s basic direction. Though some Western human rights organizations misunderstood the project and did not support it, happily funding agencies did understand what AHRC was trying to do and provided their assistance.

The problem of funding comes only when the stage is prepared for greater expansion and when there is sufficient basis with local groups on which such an expansion can be anchored. Expansion then requires support from new funders, which requires an explanation of the unique approaches the organization has developed.

However as will be explained below, real funding difficulties arise not from funders directly but rather from some of the established ways of the global human rights movement, which has been slow to respond to the changing global environment.

Potential conflict: Promoting human rights and humanitarian care versus challenging local norms

AHRC's work has always involved challenging local cultural norms. Our approach to the problem is set out on the in the back cover of the Asian Charter: "While drawing from the cultural wells of the region, [the Charter] also points to the need for cleaning these wells that have been polluted by millenniums of prejudice, discrimination, inequality and violence."

Critiquing local cultural norms requires a very deep knowledge of the same. Such knowledge is hard to acquire if one is not part of that cultural ethos. AHRC is very much a local organization, with a deep understanding of Asian cultures. AHRC is also aware of the history of debates within these cultures, and so is able to join the debate competently and legitimately.

In this region the major traditional philosophies on cultural attitudes to rights are three: first, the Indian model of absolute power known as *Arthasastra* model, second, the *Buddhist-Asokan* model and third, the *Confucian* model. These are referred to as 'models' for convenience, pointing to some central feature of each which may be relevant for present day discussion. (It must however be noted that there had been other approaches, such as that of Adivasi—Ancient peoples, also called tribal peoples - which are very different to the three dominant models mentioned here.) The *Arthasastra* was written by Chanakya or Kautilya around the fourth century BC. One of the eminent historians of Indian History, D. D. Kosambi, has written that

The title *Arthasastra* means 'The science of material gain' - for a very special type of state, not for the individual. The end was always crystal clear. Means used to attain it needed no justification. There is not the least pretence of morality or altruism. [In the *Arthasastra*] the only difficulties ever discussed, no matter how gruesome and treacherous the methods, are practical, with due consideration to costs and possible effects...

Espionage and the constant use of agent-provectors is recommended on a massive and universal scale by the *Arthasastra*. The sole purpose of every action was safety and profit of the state. Abstract questions of ethics are never raised or discussed in the whole book.

Murder, poison, subversion were used at need by the king's secret agents, methodically and without a qualm... Strife for the throne is treated as a minor occupational hazard by Canakya. No regard to morality or filial piety is ever in question. He quotes a predecessor's axiom; 'Princes, like crabs, are father eaters...'

The eleventh book (probably shortened in transmission) of the Arthashastra is devoted to the methods of systematically breaking up free, powerful, armed tribes of food producers that had not yet degenerated into absolute kingdoms. The main technique was to soften them up for disintegration from within, to convert the tribesmen into members of class society based upon individual private property [DD Kosambi, *The Culture and Civilization of Ancient India*, Vikas Publishing House, New Delhi, 1977, pp. 141–67].

The use of absolute power grew even worse under the caste system, which classified people into separate categories on the basis of birth. The caste system became even more draconian by the about the eight century AD, with the introduction of the Law of Manu: one of the worst forms of repressive governance ever known to humanity. Though this form of governance was replaced by a democratic form under the new Indian constitution (adopted in 1950), the influence of the Law of Manu not only remains but has eaten up much of the influence of the new constitution.

The heart and soul of India is split by the divisions of caste. The historical beneficiaries of this model of governance were the Indian upper castes, led by the Brahmin caste. The system that they developed over thousands of years is known as Brahminism: a collection of social regulations that amounted to the world's most comprehensive system of repression. Through a small percentage of the population being able to gain total control of a vast majority, Brahminism was able to create extreme self-contempt among the larger part of the population and extreme self-confidence among the smaller group, the Brahmins. The millions of tricks they put together to achieve this system were called 'religious rituals'. No religious ritual was as mundane and hypocritical as the Brahmins' prescriptions about eating, sitting, drinking water, use of toilets, marriage, love making, reading, dress and everything that is possible for a human being to do. Without a place for morality, ideas of transparency and accountability were alien to this system of governance.

The *Buddhist–Asokan* model fundamentally differs from the Arthashastra model in that it accepts and treasures the equality of everyone. Asoka's acceptance of Buddhist ideals is described by another eminent Indian historian, Romila Thapar, thus:

Buddhism of [Emperor Ashoka's] age was not merely a religious belief; it was in addition a social and intellectual movement at many levels, influencing many aspects of society. Obviously, any statesman worth their name would have had to come to terms with it [Romila Thapar, *History of India*, Volume 1, Penguin Books, 1966, p. 85].

Kosambi has also written:

The fundamental change was not religious so much as in the attitude shown for the first time by an Indian monarch towards his subjects: "Whatever exertion I make, I strive only to discharge the debt that I owe to all living creatures." This was a startlingly new and inspiring ideal of kingship, completely strange to earlier Magadhan statecraft, where the king symbolised the state's absolute power. The Arthashastra king owed nothing to anyone; his sole business was to rule for the profit of the state, with efficiency as the one ultimate criterion. With Asoka, the social philosophy expressed in the sixth-century Magadhan religions had at last penetrated the state mechanism... The king himself would now make a complete tour of inspection throughout his domains every five years. Such a tour must have taken up a good part of the five years, which implies constant travelling except in the rains. All previous royal journeys of the sort had been for personal pleasure such as hunting, or on military campaigns. Every high administrative official was likewise ordered to make a similar quinquennial tour through the entire territory under his own jurisdiction. In addition, there was created a new class of plenipotentiary supervisors with control over officials and special funds. The title was Dharma-mahamatra, which can be translated 'minister of morality', and would later be 'senior regulator of charity and religious affairs'. The correct translation at the Asokan stage is 'High Commissioner of Equity'. Equity is the principle beyond formal codified law and common law upon which both law and justice are supposedly based [Kosambi, *The Culture and Civilization of Ancient India*, pp. 147–8].

During this period Buddhism spread to all parts of India and many other parts of Asia. Though Buddhism was wiped out brutally from India, in a genocide that is yet to be fully studied, Buddhist influence and Asoka's ruling style have remained in the psyche of the Indian. In fact, Gandhi's non-violence was based on Buddhist ideas. In other lands where Buddhism spread—like Sri Lanka, Nepal, Burma, Cambodia and Thailand—its influence later waned when the Brahmin influence and that of the Law of Manu followed. Even in countries that later became Islamic—such as Pakistan, Afghanistan and Bangladesh - the underlying influence of these two models remains. Countries such as China, Vietnam and Japan came under the sway of both Buddhism and Confucianism and thus a blend of the two is found to varying degrees in the traditions of these countries.

Confucius had a strong belief in a natural order that was also a moral order reflecting ancient virtues. The task of government was to rectify society and restore it to ancient virtues. Under this approach, good governance is a matter of setting a moral example for people to follow. People have to be properly instructed in how to practice ancient virtues. To accomplish this task, the government must be run by persons of morality. Confucius said, "If a ruler himself is upright, all will go well without orders. But if he himself is not upright, even though he gives orders they will not be obeyed." (*Analects* XII:17) In this sense, the Confucian tradition favors the rule of men rather than the rule of law. What matters to good governance is the moral character of the officials.

The traditional Chinese government was composed of a single bureaucracy headed by the Emperor, with all officials sharing a common ideological orientation based on the Confucian tradition. The legitimacy of the Emperor was built upon a mandate from heaven. The government stressed the importance of authority and order. It was very difficult for normal people to exert political influence; they were obliged to obey officials. But the mandate of heaven also required the emperor to look after the interests of the people. If the emperor turned to oppressive rule, the officials had a responsibility to persuade him to go back on the right track. However, this internal check often did not work, because it needed the officials to have great courage and to risk their lives. Without external checks and the rule of law, absolute power finally led to the corruption of the government, as persons of virtue left it. In this situation, the Confucian tradition allowed for a revolt against the government by the people, as the emperor was seen as having violated the mandate of heaven. However, in Chinese history, the success of such revolts only brought a new emperor and left the system unchanged, starting another cycle of rule and chaos.

Hence, some cultural trends help the human rights movement while others oppose the very idea of human rights itself. An organization seeking to influence the masses, as AHRC does, has to find a way to root itself on positive aspects of Asian cultures. It has also to learn how to undermine those cultural trends that affect human rights negatively.

Potential conflict: Time constraints and the need to monitor one's work

The problems of monitoring are very complex. AHRC is quite aware that much of its work is directed towards long term goals and that it is difficult to measure impact in the short run. Even then AHRC has set up some criteria for assessment of its work, as outlined in its 2000 Annual Report:

Indicators/Considerations for Assessment of Immediate Campaigns

1. How soon after the event did the Campaign start?
2. How reliable is the information that has been disseminated?
3. How extensive is the support group that has been reached?
4. Has the information given been sufficient for a person or a group to make their intervention?
5. Has the type of intervention needed been indicated in the Appeal?
6. Has appropriate follow-up been carried out (to the extent possible) to see to what extent people have responded to the call?
7. Have other organizations also taken up the appeal?
8. Has there been media attention drawn to the issue as result of the Campaign?
9. What is the final outcome? (Positive result / Partially positive result / Positive result accompanied by some changes to prevent similar occurrences in future / Negative result)

10. If the result is partially successful or negative, what new methods have been developed to make the campaigns more comprehensive?
11. Has new educational material been developed as a result of this Campaign?
12. Has the Campaign instilled greater enthusiasm among at least a few people to work on similar issues?
13. Have new insights into the particular country, culture or situation been gained due to the campaign?
14. Has the campaign helped to improve networks and working methods?

Indicators/Considerations for Assessment of Long Term Campaigns

1. Was the Campaign initiated on the basis of a felt need? (In a country or several countries / In a locality or several localities / Amongst a particular group or groups of persons)
2. Has there been an appreciation of some of the problems associated with achieving the objectives of the Campaign and has some attempt been made to address these problems?
3. What is the quality of the Campaign materials? (Accuracy, relevance, specificity, guidance for action, comprehensibility)
4. What is the extent of the network of participants by electronic as well as normal mail?
5. How appropriate were the contact means used – were they the best means possible to engender an effective response?
6. What information sources have been created by way of websites, books or pamphlets?
7. What kind of promotional materials have been produced, for example, posters and pictures?
8. What promotion for the Campaign and the issue was gained from major TV networks?
9. What kind of attention has been drawn to the Campaign and to the issue in the international press?
10. What kind of attention has been drawn to the Campaign and to the issue in the local press?
11. What interventions have been made to United Nations agencies such as the UN Human Rights Commission and the Special Rapporteurs?
12. What impact has been made on the approach of UN agencies to the problems raised by the Campaign?
13. Over a period of time, has the Campaign helped create new impressions about the problem to which it sought to draw public attention?
14. Have there been changes in the actions of various agencies, which directly or indirectly reflect the concerns raised by the Campaign?
15. Have the materials and other inputs created by the Campaign enriched debate on the issue?
16. Has there been a response from the agencies and/or state/s against whom the Campaign has directed its demands? Was the response positive or negative?

17. Where a direct response is difficult to obtain in a short period of time, has the Campaign strengthened the forces that fight against those who create such human rights problems?
18. As result of this Campaign, have new insights been gained by the organization about the problem, as well as ways of dealing with it?
19. What is the extent and the quality of the educational material developed as a result of the Campaign?
20. What has been the response of the human rights community to the Campaign, both globally and locally?
21. Has the cooperation of the Campaign staff increased as a result of the campaign? In particular:
 - Improvement in morale
 - Appreciation of the colleagues' dedication to the task
 - Improvements in quality of work and speed of work
 - Technical improvements
 - Frank discussion of problems
 - Appreciation of limitations that may be difficult to overcome in the short term
22. Has the organisation won new friends as result of the Campaign?
23. Have the resources been used in a responsible and accountable manner?
24. Has the work been conducted within the limitations of the resources available?
25. Have attempts been made to obtain the resources needed to expand the Campaign?
26. Have the contributions of local partners been appreciated?
27. Have security considerations been the top priority at all stages of the Campaign and no adventuresome actions encouraged?
28. Has the secrecy of the sources of information been guarded with utmost care?

Naturally such assessment requires time and resources, which are very scarce.

III. Setbacks and problems

Constraints arising from the global movement on human rights

Conflicting assumptions

In regional and international dialogues the AHRC has raised problems relating to assumptions about the existence or non-existence of an institutional framework necessary for the implementation of rights. Human rights advocacy has experienced many setbacks due to assumptions relating to the availability of adequate remedies for violations, as set out by article 2 of the ICCPR. People in traditional democracies find it extremely difficult to understand what occurs in the name of the rule of law and policing in countries outside of their own domain. The difficulties in understanding suggest experiential differences of people coming from these different categories of countries. As the experiences are

fundamentally different, serious difficulties in understanding are inevitable. A worthwhile discourse between people from these different backgrounds can take place only with an appreciation of these difficulties. The classification of North and South suggests a territorial division. The classification of traditional democracies and others suggests historical, social and political differences, pointing to different stages in the development of institutions for the rule of law and policing in particular.

The setbacks arising from these conflicting assumptions are outlined in detail later in this article.

Difficulties due to incomprehension of the nature of human rights violations in the region

This aspect is perhaps easier to explain. Given the tremendous economic development in Western countries, it seems impossible for people there to understand problems like caste discrimination in India and South Asia. Such discrimination not only affects vast numbers of persons (Dalits in India number 160 million), but it also permeates the whole society, influencing every aspect of culture, including political culture. The conflict between the Arthasatran and Buddhist-Asokan models outlined above is a matter of daily experience for South Asians. Thus, what matters most to vast numbers of South Asians is incomprehensible to the West. However, it is the West that leads the global human rights debate. The recent Durban Conference on Racism saw great difficulties in gaining Western support on the issue. While NGO's and CSO's came forward in support, most Western governments acceded to the Indian Government's pressure.

The West also fails to understand the situation in countries that have faced brutal civil wars and other catastrophes. Cambodia and Afghanistan are examples of this. At the end of deadly conflicts, terms like 'state', 'political stability', 'institutional framework', 'civil society', 'governance', 'accountability', 'transparency' and 'participation' do not carry the connotations they have in Western discourse. Naturally, the basic frame of reference needed to understand the global human rights discourse is missing and will remain so for some time to come. To a different degree this also applies to Pakistan—which is now under a military dictatorship—and Sri Lanka, which has faced internal conflicts for a long time. Vietnam, China and Laos—all of which have gone through periods of revolution—also have had similar problems as they have tried to enter into democratic and human rights discourses. In fact most Asian countries have had similar difficulties, though the scale of the problems may be different. The lack of proper appreciation of these problems has resulted in a very confused situation in the global human rights movement. For its part, the AHRC has tried to find its path through these difficulties by constantly urging dialogue on these matters and often going it all alone to create such a discourse.

The West seeing itself as liberator and refusing to see itself as a violator

An area of extreme sensitivity that creates difficulties for local and regional NGOs arises from the West seeing itself as liberator while refusing to see itself as a violator. Most Asian countries are former colonies and the bitterness about past violations is very deep. The West has also contributed to many recent catastrophes, such as in all the massacres mentioned earlier in this article. Western economic policies have also contributed to many political upheavals that have produced grave human rights violations.

Open discussion on these matters is a very important aspect in establishing the credibility of the human rights movement. The scope of human rights work will expand greatly if such a discussion can take place. THE AHRC has tried to promote this discussion and thereby enhance understanding between global partners in the human rights project. The progress, as to be expected, is relatively slow.

Other difficulties: Humanitarian work, governance and conflict resolution projects

The tension between humanitarian and human rights work is a long one. However it may be said that in the Asian context there is greater realization among humanitarian agencies that unless there are long term solutions to human rights and democratization issues, there will be no end to the humanitarian issues they are presently dealing with. While this understanding exists, there are other problems that often push humanitarian organizations to be limited in their work. For example, humanitarian agencies work on refugees has been narrowed to keeping people for long periods in camps. Such policies are driven by external factors, such as limiting transmigration to more developed countries.

However, what affects human rights work more are projects on governance and conflict resolution, which have become fashionable in recent times. The conceptual framework of these is derived from the more developed countries. The partners in these projects are often governments or parties to the conflicts. The basic defect of these projects is that they do not address the deeper problems of regional political systems and the related conflicts.

The AHRC has tried to deal with these difficulties by stressing the need for reforms over the long term. We have also tried to highlight the root causes of problems relating to governance and conflict resolution. Often, our concerns have been heard.

Constraints arising from local circumstances

The elitist origins of the human rights movement in Asia

In the period following independence, the political and social leadership in many Asian countries passed to the local elites. It was also some persons from these groups who

played a significant role in introducing human rights discourse into these countries. One of the results has been that the discourse has remained largely confined to elite circles. Elite discourse on human rights is limited, as the direct victims of human rights abuses are not normally the elite. Furthermore, members of the elite are often those perpetrating abuses against the general population. In some cases this conflict between the elite and people can take extreme forms, such as in caste-based societies.

However, all over Asia many educational and social reforms have resulted in educated and articulate persons from social groups suffering victimization have begun to emerge in significant numbers. Thus, victims now have their own spokespersons. This is having a tremendous influence on human rights and democratic movements in Asia. It is towards these new groups that AHRC has been directing its efforts. In fact, one of the strengths of AHRC is its constant enrichment due to input by these persons. Recruits to human rights activities from non-elite groups have brought new vigor and vision to AHRC.

Problems in the relationship between a regional organization and local partners

Till recently the links between regional groups and local groups were rather random and loose. Before widespread computer usage communication difficulties were significant. Most contacts also used to be made at meetings of a select few. The situation is now changing due to use of email and internet facilities. Preparations for some new international events, such as the Durban Conference on Racism, have seen much wider networks develop. Use of e-groups have enabled many persons to be in contact with each other on various issues and share ideas with a wider group on a regular basis. This also has helped us to build a very extensive urgent appeals network.

The possibility of contact changes the relationship with local partners. There is greater possibility for reacting to the distress calls of victims, to get feedback on activities and continue a lively a lively debate on various issues. The AHRC has made very extensive use of such communications systems to build closer links with its local partners. The problems outlined below must be seen in the light of these international and regional realities.

A detailed explanation of one setback: assumptions regarding an institutional framework for implementation of human rights principles

The AHRC has raised the problems relating to assumptions of an institutional framework for implementation of rights in both regional and international discussions. One paper presented to an international conference put the problem in the following manner:

Article 2 [of the ICCPR] makes it obligatory for all state parties to provide an effective remedy for the violation of rights. The absence of a functioning police system indicates a failure to provide an effective remedy as required by article 2. The question becomes how

to address this problem. The human rights model that exists today is not capable of dealing with it because it presumes the existence of a functioning police system—at least to a minimum standard. International bodies established to monitor states' compliance with article 2—such as the UN Human Rights Committee and UN Human Rights Commission—examine the violations of rights and make recommendations where violations have occurred. When these recommendations are made, it is presumed that the state party to which they are addressed possesses the legal mechanisms, including a functioning policing system, to put them into effect. As outlined above, for most Asian countries such a presumption is baseless.

This presumption is inappropriate for most Asian countries as it is based on the structures and practices of traditional democracies, upon which the existing human rights model was founded. While violations of rights occur in these democracies, a basic structure exists for dealing with these violations, in contrast to most societies in Asia. Thus, the existing human rights model is inadequate to deal with the problems examined above, and therefore needs to be expanded [*Monitoring the Right for An Effective Remedy for Human Rights Violations*, AHRC, prepared for the 57th session of the UN Commission on Human Rights, p. 19].

Another AHRC paper explains the problem thus:

It is necessary to recognize some of the inherent problems that people from Western countries who represent the United Nations have in dealing with this issue. One such basic problem is the fact that a person from the West will find it almost impossible to understand what it means to have a justice system which is fundamentally flawed. It is much easier to understand a famine or a massive humanitarian problem. Such catastrophes are physical and therefore visible, but a flawed justice system is not so visible. Moreover, it is easy to attribute a collapsed legal system to cultural factors, which are more imagined than real.

This difficulty comes from the fact that a basically functioning justice system is part of the heritage of the developed Western countries. (Of course, there are several former Soviet countries in which the health of the justice system is similar to their Asian counterparts.) This is not to say that Western systems are perfect. In fact, in this age of high-speed and pervasive communication, the defects of these justice systems in Western countries are quite well-known. The only point made here is a very obvious one that people from the West take a reasonably functioning justice system as a given. Thus, a person from the West is likely to think of national institutions as a means to further reinforce what the justice system already guarantees. It is this assumption that makes it difficult for them to see the actual state of justice in the countries of Asia [Basil Fernando, 'The Need to Review the Performance of National Human Rights Commissions in the Asia-Pacific', *Human Rights Solidarity*, September 2001].

Article 15.1 of the Asian Charter puts the matter this way:

Many Asian states have guarantees of human rights in their constitutions, and many of

them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.

The impact of this problem on implementation of human rights is demonstrated by an illustration of the situation for the police, prosecution system and judiciary in several countries:

The frustration about policing is quite common. In some countries, policing has broken down to such an extent that people prefer summary killings instead of seeking remedies through criminal investigations. Sadly, it is a common criticism that the police themselves are involved in crime. Many people who seek assistance from the police often find that they have even more difficult problems by doing so. Torture is endemic, and harassment is normal. A common cause of harassment is bribery in a variety of forms. The allegation that the police help rig elections by commissions and omissions is also prevalent in several countries. The police, in turn, state that the only way for them to survive is by assisting the politicians. The result of this link between the politicians and the police is that the command system within the police institution becomes fundamentally flawed.

As for prosecutions, several countries in Asia do not have independent public prosecutors. The public prosecutor's function is sometimes performed by the attorney general's office. This system though is overburdened with many activities other than prosecutions, such as providing legal advice to the government and legally representing the government. Prosecutions suffer from subordination to the government, a lack of resources and a lack of staff. The net result is that many serious crimes and also serious human rights violations are not brought before the country's courts for adjudication. Thus, the faith of the people in the prosecution system is very low.

The faith in the judiciary is very low as well. The reasons are many. Interference with the judiciary by the executive is one major factor. This often results in internal subordination of the judiciary itself to the powers-that-be. Often the higher judiciary has been deprived of the power of judicial review, or the possibilities for such review have been limited. The curbing of the powers of higher courts, such as the Supreme Court and appellate courts, can highly limit the operation of the doctrine of the separation of powers. When the higher courts do not effectively intervene to supervise the lower courts, the quality of justice can become rather low. In addition to all of these problems, there are extraordinary delays in justice. The delays in the courts are such that it is a nightmare for those seeking recourse in the courts [Fernando, 'The Need to Review the Performance of National Human Rights Commissions in the Asia-Pacific'].

Finding a path to resolve this issue

The AHRC has made the following suggestions to resolve this issue:

1. The jurisprudence relating to Article 2 needs to be explored and developed;
2. UN bodies for human rights monitoring must scrutinise states' performance regarding Article 2;
3. Human rights educational institutes must change their curricula to include more comprehensive expositions of the implications of Article 2;
4. It is more important to encourage the reform of law-enforcement agencies than to provide them with human rights education;
5. Human rights NGOs and civil society organizations must play an active role in exposing the limitations of the existing human rights model and exploring ways to initiate change. NGOs in traditional democracies must work in partnership with NGOs outside of their countries to achieve this objective;
6. International agencies should make financial resources available for the achievement of this objective; and
7. The UN Human Rights High Commissioner's office should initiate activities and studies to promote this aim.

These suggestions have been followed up on with various activities in international and regional forums, and in country programmes. The most significant programmes in this direction have to date been in Cambodia and Sri Lanka, where very detailed work has been done to suggest ways towards adequate remedies in compliance with article 2 of the ICCPR. Meanwhile The AHRC continues to promote discussion with the human rights movement in the West, towards an understanding of the conflict arising from assumptions explained above.

Ideology, prophets and the market place

*John Clancey, Chairman,
Asian Human Rights Commission*

(Edited text of a talk given by John Clancey at the City University of Hong Kong, 29 June 2007. John Clancey is a practicing lawyer in Hong Kong and the Chairman of the Asian Human Rights Commission)

From the time of Weber, some sociologists have used the Priest-Prophet dichotomy to describe the roles played by religious actors in society. My understanding is that the Priest category represents those religious persons who uphold and support the status quo no matter what it is. These persons range from those who identify themselves closely with those in power and assist them in defending the status quo, to those who place themselves in a political vacuum and ignore social issues, thus indirectly supporting the status quo. The Prophet category on the other hand, represents those who seek to challenge and change the status quo, particularly when it is oppressive and exploitative of the majority or a significant minority within society.

In his *The Sacred Canopy: Elements of a Sociological Theory of Religion*, Peter Berger explains the priestly function when describing the theodicies that “may serve as legitimations both for the powerful and the powerless, for the privileged and for the deprived. For the latter, of course, they may serve as “opiates” to make their situation less intolerable, and by the same token to prevent them from rebelling against it.” He then goes on to comment, “Put simply, theodicies provide the poor with a meaning for their poverty, but may also provide the rich with a meaning for their wealth. In both cases, the result is one of world-maintenance and, very concretely, of the maintenance of the particular institutional order.”

I would suggest that in this age of growing secularization, there are secular religions, ideologies and the emerging idol known as the market place or the market economy, which are also seeking to enforce their semi-religious concepts of an institutional order that protects the interests of the rich and the powerful.

The Leung & Wang paper describes the prophetic role played by Cardinal Zen in support of individuals speaking out on behalf of the poor and weak in Hong Kong, and demanding that more attention be paid to the basic rights of persons, including the right to universal suffrage. Towards the end, Leung & Wang liken persons such as Cardinal Zen to a brightly shining star amidst an oppressive and repressive society in which people's basic rights are not observed, and where an authoritarian government opposes democratic forces striving for their ideals.

The bad news is that oppressive and unequal societies are flourishing in many parts of Asia and there are priestly forces - both religious and secular - helping to maintain this unjust social order. The bad news is that the gap between the rich and the poor is widening in these societies. The good news is that there are individuals and civil society groups emerging to take up the prophetic role of questioning and challenging the oppressive status quo, as seen in Hong Kong and Macau.

An example of the bad news is Pakistani President Pervez Musharraf's attempt to dismiss the country's chief justice in March 2007. The good news is that Pakistan's legal profession mobilized themselves in massive numbers to protest. Lawyers boycotted courts for days and even formed human chains around court buildings "to express their resolve to uphold the independence of the judiciary".

The bad news is that India, a country which dumped shiploads of 'extra' grain into the sea several years ago, saw 18 children die of starvation in a village in its northern state of Uttar Pradesh. The good news is that local groups built a monument to those children in January 2007, where flowers are regularly placed by the parents and others to signify that children in their village will never be allowed to starve again.

The bad news is that despite requests to government officials for food aid, a nine-month-old baby girl, Seema Musahar, and two other children in Belwa village, Uttar Pradesh also died of starvation. The good news is that after Basil Fernando, Executive Director of the Hong Kong based Asian Human Rights Commission (AHRC) wrote a letter to the local magistrate, with copies to the United Nations (UN) and other national and international organizations, the magistrate gave the issue of food assistance a high priority and promised that all children in his district would be provided with sufficient food.

The bad news is that at least thousands of children and persons with mental problems worked as slaves in brick kilns in Shansi province, China, while local police and officials did nothing to stop this atrocious practice. The good news is that newspaper reporters dared to write and expose the practice, and lawyers may now seek damages for the victims.

The bad news is that people in many cities in China are forced to sell their land at low prices. The good news is that human rights lawyers are taking up these and other cases of ordinary people.

The bad news is that government officials are harassing the human rights lawyers. Some good news is that a group was recently set up in Hong Kong to offer support for human rights lawyers in China.

The bad news is that more than 800 persons in the Philippines have been victims of extrajudicial killings, including union leaders, peasant organization leaders, journalists, lawyers, judges and even a bishop. The good news is that independent groups have identified that the military - and therefore the state - is responsible for many of the killings, while the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the Philippines military "remains in a state of almost total denial... of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them".

The bad news is that corrupt officials are thriving in China. The good news is that Auditor General Li Jinhua insists on transparency and publicity. He stated, "Audit is not only a kind of supervision of government, it is also a tool in pushing ahead democracy and the rule of law."

The bad news is that the chief justice of Sri Lanka, who is allegedly involved in corruption (Transparency International recommended the establishment of an independent panel to enquire into those allegations), was invited to give a lecture at this university last week. The good news is that after the AHRC informed the university of his background and planned a protest and forum for discussion, the invitation was withdrawn.

The economic gap between the rich and poor and the political gap between the powerful and oppressed will continue to grow until societies live by the rule of law, where the police, prosecutors and courts enforce the law equally for all citizens.

The lines are clear: those who support the Priests and those who support the Prophets.

Peter Berger has written, "The individual is not molded as a passive, inert thing. Rather, he is formed in the course of a protracted conversation (a dialogue, in the literal sense of the word) in which he is a participant." Berger goes on to comment, "Furthermore, once the individual is formed as a person, with an objectively and subjectively recognizable identity, he must continue to participate in the conversation that sustains him as a person in his ongoing biography. That is, the individual continues to be a co-producer of the social world, and thus of himself."

There is a great need to provide support to persons in our societies who are being oppressed and made victims by priests propagating a new idol -'market forces'. There is also a need to provide support to individuals so that each can become a co-producer of our social and political world and receive a just share of the economic profits being generated.

I hope that more academics will adopt the attitude of early 20th century social scientists who envisioned education and research as a means to build a more just social order, and that they will join or support civil society groups that are playing a prophetic role in today's society and encourage their students to do likewise.

Questions for reflection

The following questions were presented to the participants of the *Seventh Human Rights Folk School* held by the Asian Human Rights Commission (AHRC) in August 2007. They are an attempt to pose issues of human rights in a practical manner that resonates with the lives and dilemmas faced by thousands on a daily basis.

1. When there is no rice in the bowl can you eat the bowl instead? When there is no justice in courts, of what use is the law? Of what use is a wig to a judge when wit has left him? Of what use is a lawyer when justice does not exist and wit has left the judges?



2. Does a confession extracting officer become a law enforcement officer simply because he wears the uniform of the force that employs him?



3. Does a paltry amount of financial compensation amount to redress for forced disappearances, torture, extrajudicial killings, burning of houses and other similar acts?



4. How much must a victim be willing to pay in terms of time, money, emotional distress and the bearing of threats to life and limb in order to obtain justice?



Pictures for reflection : India

Malnutrition, Uttar Pradesh

This is Alina Sahin, an 18-month-old baby suffering from acute malnutrition in Uttar Pradesh, India. Her father is a handloom weaver who does not earn enough to find food for his family.



Anyone seeing this picture would immediately question how this could happen in modern India. India not only boasts of excess food and grain supplies, but it also has a multitude of schemes and laws obligating the state bureaucracy to assist persons facing serious food insufficiencies. Alina's plight indicates that there are some systemic problems that allow such incidents to happen.

Not only are the state system and institutions flawed, but also civil society interventions. Why did no individual notice this problem in time? Is it because such malnutrition is a common occurrence? If that is indeed the case, then the problem runs deeper than the plight of a single child not getting enough food.

A little concern and effort by a few persons; some phone calls and letters to relevant agencies could help a great deal towards feeding children like Alina. When people do not care to take such action, their distrust of state institutions and bureaucracy must be very high; demoralization within society must be high.

What are the ethical and moral issues involved here? Have the various religious codes of behaviour failed in addressing state and civil society inaction? How can a nation that boasts of so many intellectuals and popular media allow this to happen?

Child kidnapping, Bihar

This picture shows a group of young children calling for an end to kidnappings. “Kidnapper Uncle, Please stop,” says one poster. This picture is from Bihar, India but it could have been from any other place in India, Sri Lanka, Bangladesh, Pakistan or Nepal.

Sometimes kidnapers demand large sums of money as ransom, while sometimes the sums are smaller. In either case, the consequence to the child is the same. He is taken away from the protection of his parents and teachers, kept in a hostile environment amidst kidnapers who will threaten him with dire consequences if they fail to get what they want. The children are traumatized and some end up killed. Families and relatives are also affected, sometimes going into such a state of shock and paralysis that they are unable to help the surviving children.



While the state makes gestures of law enforcement, it is the very failure of law enforcement that leads to such kidnappings. State failure and inaction ultimately lies in the endemic corruption within the state bureaucracy. Paralyzed state machinery contributes to paralyzing the will of the people to protect their own.

Civil society is also unsure of how best to deal with such problems and therefore prefers to discuss grand ideas unrelated to the actual life experiences of ordinary people. The result is a deep division within society, where people no longer trust each other or depend on each other for empathy and support. This eventually leads to various forms of violence.

One prevalent - and terrible - feature of child kidnapping is that persons known to the family participate in the crime. This is a stark demonstration of societal collapse and the resultant dehumanization.

Under these circumstances, how can society come together and competently respond to the primary concern of child protection?

Mob justice, Bihar

The motorcycle rider in this photograph is a police sub-inspector. The man tied to the motorbike is alleged to have snatched a woman's neck chain. He was immediately captured and severely assaulted by a mob of people on 27 August 2007. Thereafter, the police officer took charge of the lynching; the man was tied and dragged behind the motorbike.



A policeman represents the state and is supposed to enforce the law. He is not supposed to take the law into his own hands and mete out punishment as he sees fit. And yet, it has become common in many parts of Asia where law enforcement has collapsed, for mobs to engage in lynching, with or without police cooperation. The police themselves are known to engage in atrocious acts. Killing of alleged criminals after arrest is a common phenomenon in several countries. They are alternately termed as encounter killings, killings in self defense or shooting persons trying to escape arrest.

When society accepts such brutality on the part of the mob as well as the police, how can ethics and morality be taught effectively to the young? They will learn their lessons from watching their society collapsing into such inhuman conditions. Those who make it their profession to preach and teach ethics should pay more attention to the eroding of an environment in which basic morality is respected.

Pictures for reflection : Burma

When defiance becomes a duty



(Source: DVB)

Burma is a predominantly Buddhist country, and the monkhood is central to its culture and social life. Monks have played an important role within the society and have often been leaders of social change. Particularly at moments when things become unbearable for the majority of people, the monks may take action.

Since the August 15 price hikes in Burma, as ordinary citizens have taken to the streets in protest so too have they been joined by growing numbers of monks. On September 5 and 6 an incident of violence against monks at Pakkoku, in Magwe Division, caused them to issue ultimatums that the military regime apologise and afford redress, or face the consequences.



(Source: DVB)

One of the greatest legacies that Gautama Buddha left to the ascetics who followed his path was the requirement that they obtain their food and other needs in the form of alms from the people. The giving and receiving of alms is thus a profound act of adherence to his teachings and among the most meritorious of acts. Only under the most compelling moral circumstances will a monk refuse the alms that have been offered, as to do so is to refuse to acknowledge the alms-giver as a part of the religious community. It amounts to an act of excommunication.

However, the view of monks in Burma today is that such an extraordinary moment has arrived. On September 17, 18 and 19, in response to the failure of the regime to apologise thousands took to the streets of cities and towns around the country, including Rangoon, Mandalay, Pegu, Sittwe, Kale, Pakokku, Kyaukpadaung, Tharrawaddy, Aunglan and Chauk.

In a number of places they held special ceremonies in accordance with the disciplinary code of the Buddhist order, the Vinaya, to reject as a matter of moral and religious duty any offer of donations from the military or its supporters, or to preach before them. The decision of the monks to formally boycott the regime not only reveals the profound moral stance taken by the participants but also throws a sharp light onto the scale of crisis in

authority that the military is now facing in Burma. It is captured in the recitation of those present at one ceremony on September 18, in Rangoon (which can be heard online in Pali and Burmese at http://burma.ahrchk.net/wav/20070918_Boycott.wav):

“Reverend clergy, may you listen to my words. The violent, mean, cruel, ruthless, pitiless kings [military leaders] - the great thieves who live by stealing from the national treasury - have killed a monk at Pakokku, and also arrested reverend clergymen by trussing them up with rope. They beat and tortured, verbally abused and threatened them. The clergy who are replete with the Four Attributes [worthy of offerings, hospitality, gifts and salutation] must boycott the violent, mean, cruel, ruthless, pitiless soldier kings, the great thieves who live by stealing from the national treasury. The clergy also must refuse donations (of four types) and preaching. This is to inform, advise and propose.

“Reverend clergy, may you listen to my words. The violent, mean, cruel, ruthless, pitiless soldier kings - the great thieves who live by stealing from the national treasury - have killed a monk at Pakokku, and also arrested reverend clergymen by trussing them up with rope. They beat and tortured, verbally abused and threatened them. Clergy replete with the Four Attributes - boycott the violent, mean, cruel, ruthless, pitiless kings, the great thieves who live by stealing from the national treasury. Clergy - also refuse donations and preaching. If the reverends consent and are pleased at the boycott and refusal of donations and preaching, please stay silent; if not in consent and displeased, please voice objections.

[Silence]

“The clergy boycotts the violent, mean, cruel, ruthless, pitiless kings, the great thieves who live by stealing from the national treasury. The clergy hereby also refuses donations and preaching.”

These monks have taken up the boycott as an ethical obligation. There is no way back for them now. The challenge for everyone outside the country is to understand the great significance of this action, and respond appropriately.

Practicing Ethics in Action

Ethics in Action begins with the realization that both law and morality have failed the people of many countries, who are today facing incredible forms of cruelty that they have little power to eradicate. Despite all the rhetoric of empowerment, the reality witnessed in most Asian countries is desperation and powerlessness. The two ingredients necessary for any real empowerment of ordinary people are law and morality. If living conditions are to improve, defective legal systems and the failures of upholding ethics and morality cannot be ignored. article 2, a bimonthly publication of the Asian Legal Resource Centre, sister organization of the Asian Human Rights Commission, is devoted to discussing matters relating to defective legal systems obstructing the implementation of human rights. Ethics in Action will be devoted to discussing how movements and leaderships claiming to uphold ethics and morality have failed to promote and protect human rights.

Other regular publications by the Asian Human Rights Commission:

Article 2 – This bi-monthly publication covers issues relating to the implementation of human rights standards as proposed by article 2 of the International Covenant on Civil and Political Rights.

Human Rights Solidarity – Also a bi-monthly publication and available both in hard copy (from July 2007) and on-line. This publication covers stories and analysis of human rights violations in Asia.

Asian Human Rights Commission

19/F Go-Up Commercial Building 998 Canton Road

Mongkok Kowloon, Hong Kong

Tel: (852) 2698 6339 Fax: (852) 2698 6367 Web: www.ahrchk.net

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