Chapter 5

Conclusion
Universality of human rights is the basic premise on which the concept of human rights has evolved as a coherent theory. It is the rational philosophy that justifies the existence of every individual human being with the minimum standards of dignified life. It is grounded on some basic principles of human survival which claims that no human being should be allowed to sink below that minimal threshold of human life, where a life would be so deprived or harmed to be minimally good or dignified. These conditions include basic physical security and basic subsistence, or the basic freedom from physical insecurity and from below subsistence-level existence.

It has been argued by critics that the theory has a basic paucity of its definition. Though, it defines human rights as the rights which every human being is entitled to have, if and only because of its mere existence as a human being. But it is somewhat a vague concept that didn’t prescribe any argued universal definition. The reason for this dearth lies in its moral foundation. Which means that human rights doctrine is founded on certain moral principles of the society which varies, according to the values and norms, that constitute the particularistic culture of that society.

The evolution of norms and values is a non-coherent phenomenon, without any parameters that constitute culture, so there are prominent variations in cultures. Taking this into consideration the proponents of human rights theory have left the concept to be defined under certain fixed boundaries. It was believed that people in different culture adjust it according to their own cultures. So, only those values are defined under human rights which are common to every culture or civilisation.

Different cultures evolved with their own sets of values and norms. Of them certain find the values enshrined in the Universal Declaration as contrary to their cultures. They were popularly known as ‘Culturalists’ or ‘Cultural Relativists’. They argue that the values which are provided in the declaration are not only alien to them but also certain of them are found contrary to their cultures. Hence they contend that the principle of universality of human rights as advocated by the Western societies is not universal at all.
To a step further the supporters of universality principle were criticised by their being ‘cultural dominant’. This is because the ‘International Bill of Rights’, the document which enshrined basic human rights, as promoted by the West, that they constitute in what commonly called the Charter of human rights. Hence the universality of human rights underwent contradictions, when they are criticised of being European cultural dominant. But the arguments are not based on firm and rational ground as they were claimed. This is because if human rights are based on exclusively Eurocentric ideas, as they claimed, and are biased against non-western countries and cultures, then the political legitimacy of human rights talk, human rights covenants, and human rights enforcement is called into question. But that has not happened in history and contrarily the declaration has been accepted by a number of countries without any reservations.

Another fact that provides the defence to universality is that the declaration which is claimed as European domination is secular in text. The secular ground of the document is not a sign of European cultural domination as it designed to make agreement possible across a range of divergent cultural viewpoints. Many traditions, not just Western ones, were represented at the drafting of the Declaration particularly the Chinese, Middle Eastern, Christian, Marxist, Hindu, Latin American, and Islamic. The drafting committee members explicitly construed their task not as a simple ratification of western convictions but as an attempt to define a limited range of moral universals from different religious, political, ethnic, and philosophical backgrounds.

Hence for the first time, individuals-regardless of race, creed, gender, age, or any other status-were granted rights that could use to challenge unjust state law or oppressive customary practices. So human rights declaration is not based on the superiority of European civilization but as a warning by Europeans that the rest of world should not seek to reproduce its mistakes of wars.

To the cultural differentiation, the incompletely theorised model allows for any given ethical position, or substantive human rights value, to be indigenously justifies by the various human traditions. It does not require people to assent to one specific political philosophy in order to arrive at a human rights conclusion and does not speak to the issue
of which substantive values are included and which are not included in it. Hence it passively recognized the cultural particularistic nature of human rights.

But this particularistic feature has been undermine by East and Southeast Asian countries that espoused their cultural distinctness in the name of ‘Asian Values’. Though a set of non-coherent ideas, it closely resemble commonplace conservative values like strong leadership, respect for authority, law and order, a communitarian orientation placing the good of the collective over the rights of the individual, and emphasis on the family.

Based on these arguments, Asian values manifest three common sets of features. First, it is primarily based on negative approach towards West. This means that they are primarily concerned with projecting criticisms of West on various fronts. Their motive is always to draw a negative image of the Western countries as confrontational towards the Asian counterparts.

Second, is that by promulgating the Asian values approach, they perform a task of building their identities or image in the area which is widely known for multiplicity of ethnicities, language, culture, or tradition. Hence it is an effort to raise their stature in the international arena by the ways of cultural differentiations and uniqueness.

And finally, on the foundation of cultural arguments they use to justify repressive, intolerance and undemocratic nature of their political regimes. This is predominantly based on their contention of establishing stability in their respective countries. Citing the historical legacies and misgivings of the colonial past that hampered their development and primary growth, which is the core cause for their present state of instability and chaos, their primary concern is focused on establishing order. Hence, the positive notion of Asian values carries little significance in domestic politics, whereas its logical counterpart, negative generalizations about the West, is far more important.

While discontention against West, the proponents of Asian values alleges that it is in the hidden agenda, with which the West is supposed to introduce Universalist issues in Asian societies in order to cause disturbance and stall the rising political and economic
significance of Asian economies with a view to maintaining its own hegemony. Also they were frequently been accused of exploiting this void for a crusade against Third World countries, linking democracy and human rights to trade agreements. But the universality of human rights does not circumscribe any forceful infliction of western culture, values and tradition on other civilizations. It is simply not the case, as Asian critics contend, that human rights forces the western ways of life upon their societies. For all its individualism, human rights do not require adherents to jettison their other cultural attachments. What the Declaration does mandate is the right to choose, and specifically the right to leave when choice is denied. Adopting the values of individual agency does not necessary entail adopting western ways of life. Believing in your right not to be tortured or abused need not mean adopting western dress, speaking western languages, or approving western ways of life.

While evaluating the features of Asian values, it is found that the principle of justifying oppressive political order in the name of stability is the most important of three. The principle is also the base of the foundation of the Asian values debate. Like the Tiananmen massacre in China in June 1989, resulting in international condemnation of the Chinese regime, and the extensive house arrest of Burmese opposition leader Aung San Suu Kyi, which also attracted immense international attention, have animated several Asian governments to promote Asian values.

Hence my first analysis is that the concept of human rights in Southeast Asia is based on the premises of Asian values. And these Asian values are based on the ideological construct of Cultural Relativism, which contradicts the principle of Universality, the basis of human rights theory as prevailing in the world.

With an inherent inconsistency towards western political and value systems, the proponent of Asian way has established certain principles under the regional organisation of ASEAN. These principles which are meant to defend the traditional security of the State and to a greater level the region.

The history of Southeast Asian countries describes that most of the countries of the region were under colonial subjugation and exploitation where they were entirely
ruined by the colonial masters. And the irony is that when these got independence, they were engulfed by the politics of cold war. Hence the prospects of regionalism were failed to evolve in the region. Contrarily when they succeed in constructing ASEAN, they were primarily concerned with their traditional security, then anything else. So, it was left on the conventions, treaties and other value systems to construct the bond of togetherness in the region. The theoretical construct of ASEAN Way is the by-product of those norms, values and culture which were allegedly professed by the regional countries. It is the denomination bestowed on the policies which are distinctly pursued to overcome regional conflicts and problems. Hence what claimed earlier through the doctrine of ‘Asian Way’ or ‘Asian Values’ was later defended under the rubric of ‘ASEAN Way’.

Of the various norms and values that contribute in the construction of ASEAN Way, the role of regional documents, declarations and treaties erected under ASEAN were the major ones to contribute in them. These instruments had emphasized on certain norms which are having their own importance.

The ‘non-use of force and pacific settlement of disputes’, as a norm was cherished to prevent armed aggression from the belligerent countries, particularly those who were expanding their defence expenses to acquire the status of powerful and secure country. It was also stressed because most of the countries are either having disputes with their neighbours while many of them were vulnerable to external threats.

Another norm profoundly given the substance was ‘regional autonomy or regional solutions to regional problems’. It was taken into consideration because the region at time has become the ground for superpower conflicts. The cold war has brought immense dangers to the doorsteps of many of the countries of the region. Hence to prevent any such cold war from converting into hot war, while falling in the hands of power blocs, it was expected that regional problems shall be solved at the regional level. It has anticipated the countries to follow regional solutions for the regional problems.

The next important norm to persist in the region was of ‘no military pacts and preference for bilateral defence cooperation’. It was erected to contain security alliance which were formulating in the region, particularly the ANZUS and SEATO which has
brought the zone of conflict to Southeast Asia. Similar as the last one it aimed to prevent superpower conflict in the region. The main thrust behind this norm was to reduce the suspicions of bilateral military pact that could induce every other country to join the pact for securing their territory. Hence only bilateral military arrangements were allowed in the norms of behavior.

The last but the most important was the ‘principle of non-interference’ in the other countries domestic arena. It was in the intention to establish a norm where no other state was allowed to interfere in the domestic arena of their regional partners. This was to preserve the sovereignty and independence of the states. Hence all these norms were established through there being encapsulated in the regional agreements and declarations, like the Bangkok Treaty of 1967, and the Kuala Lumpur Declaration of 1972. They were also stressed by the countries since these are also provided in the UN Charter.

By constituting such norms and principles ASEAN members has secured the traditional security of the State from any unexpected threat. These principles and norms have their contradictory contributions. While defending the traditional security they have prevented the conflicts in the region to escalate but contrarily it has provided the framework for ASEAN to function in. This is say that they had cherished only those values and principles which limits the role ASEAN to function as an independent entity.

Hence the traditional security dimension which induces the Southeast Asian countries to construct ASEAN-type institution and further the ASEAN Way was all to justify the authoritarian repressive regimes which didn’t have any room for human rights flourishment. So the ASEAN’s policy toward human rights in the period of ASEAN Way or non-intervention era was negative one. It could only claim to have harnessed the principles of ASEAN Way which if not fostered, can escalate into major conflicts while threatening the human survival and human rights thereto. Hence it prevented the outcomes of conflicts which might subdue the human rights of vast community that reside in these countries. On the contrary it does not initiate any policy that exclusively aimed at broadening human rights. Rather the principle has made ASEAN the culprit of human right violations.
So my next analysis is that the regional countries in thrust of securing their territorial boundaries have limited the ASEAN to perform its task under a restricted arena. And this is done by the norms, particularly the non-intervention principle which is the base of ASEAN Way. Hence the doctrine of ASEAN Way has proven as a stumbling block in the path of smooth functioning of ASEAN.

So, the traditional security paradigm which was initiated by ASEAN, through the doctrine of ASEAN Way has proven futile in encouraging human rights practice in Southeast Asia. Rather the practice of human rights violation has become a daily event for the regimes. Together certain factors have contributed in provided legitimacy and courage for the regimes to sustain the international environment where democracy was the norm of governance. It is distinctly interesting that the political regimes in Southeast Asia have survived even when they had discarded democracy and human rights. ASEAN Way was the prominent factor, which helped them to survive as illiberal democracies. This can be analyzed by the fact that non-democratic regimes started evolving in the region by the mid of 1990s. Hence what came in existence were the political regimes that are entirely different from those which prevail in Western countries. They brought an alternative to the western claim of universal application of democratic regimes.

These political regimes are coined by Fareed Zakaria as 'illiberal democracy', because they limit the activities of civil societies, while at the same time being democratic in the sense that they provide political rights which enable people to have a choice in determining the nature of the system and its leaders. The evolution of these kinds of regimes goes to two factors. First is their ability to manage the tension and conflicts which can threaten their physical security. And second was their immense level of economic growth which they achieved by following those distinct norms and values which they call ASEAN Way.

Typically, an authoritarian state would deny any accusation of human rights violations and would put much effort into proving that violations were not taking place. Not so with illiberal democracies. Knowing that they have substantial popular support for their views on rights and duties, illiberal elites are launching a counter-offensive that
sometimes is labelled the ‘Asian Way’. It culminates many times to the extent that they raise their concern against democracy while justifying their regimes. And they became more ardent when they achieved an enormous economic growth to be titled under ‘Tiger Economies’. The formulation of Asian values conveyed a wish to match this economic success with a societal design distinctly different from the Western model and to counter what was perceived as rampant ‘Westernisation’. Hence they constituted and justified their forms of governance, as distinct to the West.

So, my next analysis is that ASEAN Way on the one side has subdued the democratic norms in the society while flourishing illiberal democratic regimes, and on the other side it has managed to produce immense economic growth to these countries. Hence the hypothesis that democracy precedes economic development was proven wrong in context of Southeast Asia.

But the economic success shortly collapsed at the advent of Asian Financial Crises of 1997 that drastically hit the economies of the region. Hence their vulnerability was proven to the entire world and what earlier claimed the ASEAN Way has started fading from the debate. Almost every country has discarded it and the debate comes to an end.

With the end of debate, ASEAN has diversified its policy of non intervention to the constructive engagement. It was the shift of policy that earlier covers the traditional ones to now emphasise on non-traditional security. It has the motive to cover the issue like human rights, environment, health issues etc. Also, the forces of globalization are responsible for the change in ASEAN’s policy.

ASEAN now particularly have started giving importance to the human rights concept. It can be analysed from the efforts it had laid to erect the ASEAN Charter and later its culmination in ASEAN Intergovernmental Commission on Human Rights. Hence ASEAN had made a shift in its security policy, from traditional to the non traditional ones.
So, the analysis is that, it owes to the States of Southeast Asia instead the ASEAN in implementing the human rights standards enshrined under the UN Charter. It was the States who has paralysed the organization in implementing human rights and not ASEAN at the guilt.

Out of the various illiberal democratic regimes, the case study focuses on Myanmar, one of the authoritarian regimes of Southeast Asia. While analysing the state of human rights affairs it has been found that almost each and every area of life under Myanmar is subjected to human rights violations. From ethnic people to the women, and child were all subjected to the repressive policies of military junta. It is the junta government which by its intolerant policies has converted the mass number of people to either internally displaced, insurgent or the refugee in neighbouring borderlands. The government not only infringed the civil and political rights of the people but also created the havoc of environmental degradation and economic degeneration. While on the health front it entirely failed to contain the spread of AIDS and Malaria like epidemics. Moreover its policies of favouring Chinese had brought not only a direct threat to the India’s northeast but also to the entire region. In the present era of globalisation when it is almost impossible to close the frontiers, Myanmar has not only survived but able to rule as an authoritarian country. It owes to the instrument of force particularly the repressive one which has subdued the opposition in any form, while securing its existence.

Myanmar under the international scenario has been subject to three different approaches addressed by three groups of countries. With the common motive to induce democracy and human rights in the regime there were three different paths. First, is the policy of ‘sanctions’ as pursued by the western countries, particularly the United States and the European Union. Sanctions were employed as an instrument of force to induce democratic reforms in the State. Their policies are based on the doctrine that democracy precedes the economic development. Hence, Myanmar if want to survive from economic collapse have to have follow the path towards democratization.

Contrarily the Eastern approach led by the countries of Asia and Southeast Asia were motivated by the doctrine that economic development leads to political change and
particularly towards democratization. Hence, these countries use to follow the policies of economic cooperation. They argue that sanctions would only hurt the common people and not the powerful junta. Hence it's useless to have sanction inflicted on common people. But in reality most of these countries are having evil intentions to harness the economic benefits from the State.

And the third policy is pursued under the international organisation called United Nations. It has followed a different policy towards Myanmar, which is the mixture of the two policies. It espoused for both the instrument of force through sanctions and the measures of economic development through sustainable development.

But all three policies failed in their efforts to heal the plight of common people in Myanmar. So, ASEAN has initiated the policy of 'constructive engagement'. It is the policy to engage Myanmar in the process of dialogue on various issues of common and regional concerns. Though the apprehensions of Myanmar falling in prey to Chinese influences had compelled ASEAN to invite it into the association but that didn't induce any positive results.

The period of constructive engagement was also proved in failure as Myanmar continued its policies of mass repression and violence. It has also refused to provide amnesty to the Aung San Suu Kyi, except for a very brief period. Instead of moving towards the democratic pathways Myanmar has gone it extreme to not only violate the human rights of the common people but to entire extinguish them.

So, the period of 'constructive engagement' has witnessed an unprecedented increase in human rights violations by the junta government. It is all because of the legitimacy it has acquired through the ASEAN membership. With this legitimacy, Myanmar got confident enough to resist any kind of pressure from the international community. Hence, the analysis provides a sufficient ground to the hypothesis that ASEAN's policy of 'constructive engagement' has failed in transforming positive changes in the country. Contrarily it has provided the junta with a status of legitimacy, which it otherwise could not get. So, it goes to the failure of ASEAN's policy in changing the Myanmar's human rights scenario.
Nevertheless, ASEAN has shifted its policy from constructive engagement to the 'flexible engagement' in the late 1990. It was aspired towards more positive changes through the policy of frank and open discussion. But on the same footing it has also proved in blunder.

Myanmar contrarily has launched the National Convention in this period to bypass the international condemnation on various issues. This National convention was the path for political transformation in the Myanmar. So, continuing in the process Myanmar in 2003 declared the 'seven point roadmap to democracy'. With various phases of transition it has finally opined the pathway. But on the same footings it has called for the constitution framing on frauds and cheatings. Apart of the referendum which was called to ratify the constitution, junta government has pursued the policy to dilute its commitment of fostering democracy.

In the ratified constitution junta has given reservation of seats for the military and other such discretionary powers. Hence, it has succeeded in entrenching the role of junta in the constitution. This means that the new constitution will not satisfy the parameters of democracy. Rather it is to constitute a regime which imitates the Indonesian model.

By the Indonesian model, junta government in Myanmar will establish a regime where the military has both the role in defence and politics of the country. Since Indonesia has those conventions to contain the authority if it transgressed its limits. But no such resistance is available under Myanmar where culture is destroyed before conventions.

Hence it left to the two opposite forces which could work as the last resort to change the country. From the ground level, it goes to the civil societies which are the viable force to inculcate the democratic ethos in the society. But that is a long term policy which cannot bring result in the present state of affair. And second is the instrument of force either employed through the mechanism of sanctions or by the humanitarian intervention. But their feasibility had also lost Myanmar is heading towards a democratic path, a facade only to deceive the international community.
Though ASEAN has not achieved major success in Myanmar, particularly in human rights scenario, but its efforts cannot be undermined. It is by the efforts of ASEAN that Myanmar has not only signed the ASEAN Charter but has ratified it recently. ASEAN has been constantly engaged in Myanmar to foster democracy at anytime maybe.