Introduction

There is an ever-growing interest in the values of the East – not only in other parts of the world, but also within the East itself. In the East, curiosity and regard for its own religious heritage, philosophical history and values are increasing; while Eastern concepts such as non-violence, yoga, vegetarianism, nirvana, karma, meditation and mindfulness have become global phenomena. Popularised in the West as “The Light of Asia”¹ by Sir Edwin Arnold’s poem published in 1879, the life of Buddha served as a catalyst in generating interest in Buddhism globally. The international law concept of Panchsheela² and the human rights principles of tolerance, secularism, universalism and the Middle Way³ approach to life have their roots in Eastern civilisations. The Principles of Panchsheela were not invented overnight by India and China in 1954, but were developed over time based on Hindu-Buddhist philosophies, including notions such as “live and let live”, “the world is one family” (वसुधैव कुटुम्बकम्)⁴ and the Buddhist Pañcasīla or Five Virtues. The mystique associated with facets of Buddhism and Hinduism, and related sects grounded in Eastern civi-

¹ Edwin Arnold, *The Light of Asia: The Great Renunciation* (London, 1879). Within ten years of its publication, it had appeared in over 100 editions.

² The Five Principles of Peaceful Co-existence are as follows: (1) mutual respect for each other’s territorial integrity and sovereignty; (2) mutual non-aggression; (3) mutual non-interference in each other’s internal affairs; (4) equality and mutual benefit; and (5) peaceful co-existence. They were included in the 1954 agreement between India and China and in the Bandung Declaration of the Asian-African States adopted at the Bandung Conference, Indonesia, in 1955. See for the full text of the Indo-China agreement (which entered into force on 3 June 1954): *United Nations Treaty Series*, vol 299, United Nations, pp 57–81; <http://treaties.un.org/doc/publication/unts/volume%20299/v299.pdf>.

³ The Middle Way is between the extremes of indulgence and asceticism on different aspects of personal and social life. Although the Middle Way is attributed to Buddha, Krishna had also promoted the same idea through the Bhagavad Gita. For instance, verses 6.16 and 6.17 of the Bhagavad Gita speak of doing everything in moderation to become a yogi and through yoga – that is, by regulating one’s mind and habits, one can achieve the state of a yogi. Bhaktivedanta Swami Prabhupada, *Bhagavad-Gita as It Is* (the Bhaktivedanta Book Trust, California, 1986), pp.324–329.

⁴ This is a Sanskrit phrase found in Hindu scriptures such as the Maha Upanishad. Verses 71–73, Sundar Hattangadi, “महोपनिषत्” (*Maha Upanishad*) (2000), Ch 6. The full verse reads as follows: अयं बन्धुर्यं नेति गणना लघुचेतसाम् । उदारचरितानां तु वसुधैव कुटुम्बकम् ॥; https://sanskritdocuments.org/doc_upanishhat/maha.pdf.

lisations, has captured people's imaginations worldwide and drawn attention from both the East and West to the values of Eastern civilisations. Dr Sarvepalli Radhakrishnan, the former Oxford Professor of Eastern Religion and Ethics and later President of India, says in his seminal work on the Upanishads that "Nothing is more sacred to man than his own history", which rings true to many people of the East these days.⁵

This growing interest in the East is also due to the increased prosperity and economic power of Asian countries, especially China and India. With China re-embracing Buddhism⁶ – building a Buddhist monastery in Lumbini in Nepal, the birthplace of Buddha, and encouraging the Chinese to visit Lumbini⁷ – interest in Buddhism is growing. A quest is also underway for universal values,⁸ which will undoubtedly include an examination of the values of Eastern civilisations – mainly those informed by Hindu and Buddhist scriptures and practices. International human rights law literature and United Nations (UN) human rights reports and publications are replete with assertions that human rights are universal. Yet the question is how "universal" these human rights actually are. What is the basis of the assertion of the universality of human rights? Are they universal because the Universal Declaration says so; or because the Declaration and the core UN human rights treaties have received near-universal acceptance? Do they emanate from all major civilisations and all major religions of the world to qualify as universal values? And if so, what contributions have the Eastern civilisations – mainly Buddhism and Hinduism – made to the universality of human rights? These are the questions that need to be answered with reference to the values of the major civilisations of the world, and this study seeks to do so with reference to the two major Eastern civilisations: Hinduism and Buddhism.

⁵ S Radhakrishnan, *The Principal Upanisads* (edited with introduction, text, translation and notes), (Harper Collins Publishers, George Allen & Unwin, London, 2012), p 6.

⁶ Jana Igunma, "Introduction", in Jana Igunma and San San May (eds), *Buddhism: Origins, Traditions and Contemporary Life* (British Library, London, 2019), p 9.

⁷ President Xi Jinping of China stated on the eve of his state visit to Nepal in 2019 that: "The Zhong Hua Chinese Buddhist Monastery in Lumbini stands as another symbol of our religious and cultural interactions. Nepal is the first South Asian country to be designated an approved destination for Chinese tourists." Xi Jinping, President of the People's Republic of China, "Toward Greater Progress of China-Nepal Friendship across the Himalayas", *China Daily*, www.chinadaily.com.cn/a/201910/11/WS5da026bba310cf3e3556ff60.html.

⁸ See, for example, (Lord) Stephen Green, *The Human Odyssey: East, West and the Search for Universal Values* (Society for Promoting Christian Knowledge Publishing, London, 2019).

1. THE RATIONALE FOR THIS STUDY

The values of Western civilisations and their contribution to the development of human rights, the rule of law and democracy have been asserted in a wide range of literature. In contrast, few studies have been conducted on the values of Eastern civilisations and their contribution to the development of human rights in the wider sense of the term. Western scholars are not usually familiar with the vast body of scholarship in Eastern civilisations; nor do they go back in history to understand and appreciate the contribution of Eastern civilisations. This intellectual gap renders the work of such scholars limited in scope. It is also partly this ignorance and partly, to borrow the words of Alexandrowicz, “the fallacy of projecting the present into the past and interpreting history by *ex post facto* standards”⁹ of human rights that has led to a somewhat dismissive attitude on the part of some scholars regarding the existence of the early notions of human rights in Eastern civilisations. Alexandrowicz states that: “The Hindu world had several centuries before the Christian era developed a machinery of inter-state negotiation which reflected the high level of political organization of these states.”¹⁰ It is within this political organisation that one can also see the early norms of human rights. Therefore, the view of many Western scholars that “capitulations were the expression of inferior civilization of Eastern countries is not tenable in the light of historical evidence”.¹¹ This study aims to unearth and bring to light the historical religious evidence of the early notions of human rights in Eastern civilisations and the contribution that these civilisations have made to modern conceptions of human rights. It is necessary for both Eastern and Western readers to have an understanding of Eastern religious traditions in order to understand the East and its values, whether modern or ancient, since almost all Asian thoughts are religiously conditioned.

The historian John Keay states that quite early on in antiquity – that is, in the mid-first millennium BC – the East experienced a frenzy of intellectual activity due to the birth of different philosophies of life and social organisation, including experiments in the organisation of states.¹² This was the time of the

⁹ CH Alexandrowicz, “The Afro-Asian World and the Law of Nations”, 123 *Recueil des Cours* (1968-I), pp 121–210 at 125.

¹⁰ *Ibid*, p 207.

¹¹ *Ibid*, p 208.

¹² John Keay, *India – A History: From the Earliest Civilisations to the Boom of the Twenty-First Century* (Harper Press, London, 2010), p 47.

Middle Way, nirvana,¹³ non-violence and yoga,¹⁴ preached by both Buddha and Krishna; the formulation of the Jain code of conduct by Nataputta, known as Mahavira; and the reorientation of the Vedic philosophies through the Bhagavad Gita by Krishna. All of these developments of the mid-first millennium BC had a lasting impact on the lives of the people of the East, shaping the religious and philosophical discourse to this day and influencing thinkers beyond the East, such as those in ancient Greece. When belief in the traditional Vedic values and way of life waned, Krishna, Buddha and Mahavira came up with their own philosophies of life and interpretation and reorientation of Vedic values, and shaped the religious and philosophical discourse accordingly.

Even the debate on forms of government was already underway in the East in antiquity. The thinkers and philosophers of the time, such as Buddha, explored alternatives to monarchical authority and proposed alternative state systems with very different constitutions. According to Keay: “These alternative state systems have been variously interpreted as oligarchical, republican or even democratic.”¹⁵ The term now used for them is *gana-sangha*, with some federal and democratic characteristics. The Marquis of Zetland, British Viceroy of India, who appreciated the depth and breadth of the Eastern political thought, stated:

And it may come as a surprise to many to learn that in the Assemblies of the Buddhists in India two thousand years and more ago are to be found the rudiments of our own parliamentary practice of the present day.¹⁶

The practice of tolerance in the East has had an impact on the West and on the evolution of the concept of human rights. Alexandrowicz states that the European agencies in the East learned the lesson of tolerance and co-existence of Eastern societies and “transplanted their experience to the West, which had been so long incapable of extricating itself from the obsession of religious wars”.¹⁷ He adds that European writers (Vattel, Justi, de Martens) formulated

¹³ Nirvana means ending the process of materialistic life and attaining a state of blissful inner happiness.

¹⁴ These days, yoga is practised mainly for physical wellbeing; but it was traditionally regarded in both Hinduism and Buddhism as a means to train the mind for happiness and blissful life. It was a technique for self-realisation.

¹⁵ John Keay, *India – A History: From the Earliest Civilisations to the Boom of the Twenty-First Century* (Harper Press, London 2010), p 47.

¹⁶ Introduction to GT Garratt, *The Legacy of India* (Clarendon Press, Oxford, 1937), as cited in CG Weeramantry, *An Invitation to the Law* (Lawman, New Delhi, 1998), pp 22–23.

¹⁷ CH Alexandrowicz, “Kautilyan Principles and the Law of Nations”, 41 *British Yearbook of International Law* (1965), pp 301 ff at p 312.

their views on sovereignty, *inter alia*, under the impact of the practice of the state of the East within the Hindu-Buddhist influence.¹⁸ He concludes that Western civilisation “benefitted in so many respects” from the practice of the states of the East, “which helped to shape some of its rules and precipitated its secularism”.¹⁹

Combined, Hinduism and Buddhism – two of the main religions or, more accurately, the main Eastern philosophies – have influenced the lives and philosophies of one-quarter of humanity. While India’s 1.4 billion population is predominately Hindu, Buddhism has the largest following in today’s China,²⁰ a country with a population of 1.4 billion, where Buddhism was once the state religion. According to the Pew Research Center, half of the world’s Buddhists now live in China.²¹ Therefore, this study aims to enhance the understanding of the core values of Hinduism and Buddhism both for believers in these two great religions and for non-believers, whether Western or Eastern, Christian or Muslim. The hope is that this study will contribute to the reform and modernisation of certain antiquated and discriminatory practices within communities, with the aim of creating a fairer society for all, by enabling both non-Hindu-Buddhist societies and Hindu-Buddhist societies to benefit from insight into some of the best practices in the Hindu-Buddhist traditions, such as the acceptance of dissention, pluralism, multiculturalism, tolerance, universalism, secularism and personal liberty.

This study focuses on the norms underpinning these two seminal philosophies – as, strictly speaking, Hinduism and Buddhism are not religions, but rather philosophies of life or ways of life or the culture of society. In doing so, it seeks to unearth the ancient beliefs and practices within the Hindu-Buddhist scriptures and communities. Both Hinduism and Buddhism evolved in the fertile and populous valleys of the Pamir/Hindu Kush and Himalaya mountain ranges and along the snow-fed Amu Darya (Oxus), Indus, Ganges and Brahmaputra rivers. Although China and India – two of the world’s most populous nations – are inhabited by people of different races, languages and civilisations, they are connected in terms of their religious heritage and the shared linchpin is Buddhism. Some of the concepts – such as those of dharma,

¹⁸ *Ibid*, p 307.

¹⁹ CH Alexandrowicz, “The Afro-Asian World and the Law of Nations”, 123 *Recueil des Cours* (1968-I), pp 121–210 at 210.

²⁰ It has been reported that around 400 million people of China’s total 1.4 billion are of the Buddhist faith. “The Rising Nepal”: <https://risingnepaldaily.com/main-news/chinese-president-xi-visit-expected-to-promote-buddhist-philosophy-culture>.

²¹ “5 facts about Buddhists around the world”, 5 April 2019, Pew Research Center: www.pewresearch.org/fact-tank/2019/04/05/5-facts-about-buddhists-around-the-world.

karma and the transmigration of souls – are the same in both Buddhism and Hinduism, whether in China, India, Nepal, Thailand or other states with a Hindu-Buddhist heritage. Once introduced to China, Buddhism spread rapidly within the country and became the state religion of China in 379 AD. When Emperor Ashoka²² unified India by employing the cruellest of methods, he later regretted killing and maiming people in the conquered territory during the conquest and consequently embraced Buddhism, spreading it within his empire. Thus, the two most populous nations on earth – then and now – have had Buddhism as the state religion in their past; and that legacy still lives on today. This is how Buddhism connects Indian civilisation with Chinese civilisation. Even today, the largest following of any religion in China is Buddhism, with about 400 million adherents nationwide. Likewise, states such as Japan, Korea, Thailand, Cambodia and Vietnam also have a strong Buddhist heritage. For instance, the first Japanese constitution of Shotoku Taishi in 604 AD was based entirely on Buddhist principles.²³

2. SCOPE OF THIS STUDY

The objective of this study is to assess whether Hinduism and Buddhism have any notions of human rights in their scriptures and practices; and if so, how these might have contributed to the development of the modern notion of human rights. This study will identify the notions of human rights in Hinduism and Buddhism, explore their expression in Hindu and Buddhist scriptures and practices, and assess their influence on the contemporary understanding of human rights in those states with a Hindu-Buddhist heritage.²⁴ Hinduism and

²² Emperor Ashoka the Great who ruled between 268 and 232 BC was the third ruler of the Indian Mauryan Empire, the largest ever in the Indian subcontinent and one of the world's largest empires at its time.

²³ See CG Weeramantry, "Buddhism and humanitarian law", in VS Mani (ed), *Handbook of International Humanitarian Law in South Asia* (Oxford University Press, New Delhi, 2007), p 12.

²⁴ See generally, Matthew Ritter, "Human Rights: The Universalist Controversy. A Response to the 'Are the Principles of Human Rights "Western" Ideas? An Analysis of the Claim of the "Asian" Concept of Human Rights from the Perspectives of Hinduism', by Surya P Subedi", 30(1) *California Western International Law Journal* (Fall 1999), pp 71–90; Surya P Subedi, "Are the Principles of Human Rights 'Western' Ideas? An Analysis of the Claim of the 'Asian' Concept of Human Rights from the Perspectives of Hinduism", 30(1) *California Western International Law Journal* (Fall 1999), pp 45–69; Surya P Subedi, "The Concept in Hinduism of 'Just War'", 8 (2) *Journal of Conflict and Security Law* (Oxford University Press, Oxford, 2003), pp 339–61; Werner Menski, "Hinduism and Human Rights", in John Witte and M Christian Green (eds), *Religion and Human Rights: An Introduction* (Oxford University Press, Oxford, 2011), ch 4; Harold Coward (ed) *Human Rights and the World's Major*

Buddhism are interrelated and have shaped the religious and cultural heritage of nearly one-third of humanity. The question thus arises: do Hindu-Buddhist values differ from the values of other civilisations? Also, do contemporary notions of “Asian values” or cultural relativism have their basis in Hinduism and Buddhism? Or are “Asian values” an invention of autocratic rulers of Asia to justify their system of governance, which imposes restrictions on the exercise of universal rights and freedoms by the people in those countries?

It should be stated at the very outset that, although this book is entitled *Human Rights in Eastern Civilisations*, it focuses mainly on an examination of the possible roots of human rights in Hinduism and Buddhism, and their influence on contemporary society. This is due to the fact that both of these religions are older than the other major religions of Asia, and combined they have a larger following than other religions in Asia proper. Hence, the focus of this study is on Buddhism and Hinduism as Eastern civilisations. It should also be emphasised that, strictly speaking, neither Hinduism nor Buddhism is a religion; they are rather philosophies of life or a way of life or the culture of society. Neither is an organised religion and neither has a religious head. There is no universally accepted single Hindu or Buddhist scripture that can be regarded as the Hindu or Buddhist equivalent to the Bible or the Quran. Furthermore, in Hinduism, there is no single messiah who represents Hinduism, comparable to Jesus Christ for Christians and the Prophet Mohammad for Muslims. Islam is another great religion of the East; so too are Jainism or Sikhism, Judaism, Taoism and Shintoism. A sizeable number of people throughout Asia, and especially in the Philippines, also practise Christianity. Therefore, it is difficult to identify a set of values that could be called “Asian values” or “Eastern values”; but it is possible to identify Hindu and Buddhist values based on the ancient scriptures.

From this, it follows that Asia is not at all a homogenous continent. Rather than examining all Asian religions, including Islam, this study focuses on the two major Asian religions: Hinduism and Buddhism. No Asian would identify himself or herself as “Asian”. The landmass denoted as Asia is a vast, popu-

Religions, Vol 4: *The Hindu Tradition* (Praeger, Westport, 2005); Arvind Sharma, *Hinduism and Human Rights: A Conceptual Approach* (Oxford University Press, Oxford, 2004); CG Weeramantry, “Buddhism and Humanitarian Law”, in VS Mani (ed), *Handbook of International Humanitarian Law in South Asia* (Oxford University Press, New Delhi, 2007); KN Jayatilleke, *The Principles of International Law in Buddhist Doctrine*, Academie de droit international, *Recueil Des Cours*, 1967-I, Tome 120 de la collection, pp 445–556; RP Anand, *Studies in International Law and History: An Asian Perspective* (Lancer’s Books, New Delhi, 2004); Antony Anghie, “Asia in the History and Theory of International Law” in Simon Chesterman, Hisashi Owada and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford University Press, Oxford, 2019), pp 68–91.

lous continent characterised by racial, cultural and religious diversity. “Asia” is more of a geographical term. Even the term “Asia” itself is not Asian; it is a name given to the continent by non-Asians.²⁵ People outside of Asia identify different nationalities as Asian. In the US, primarily people of Chinese, Japanese, Korean and Vietnamese origin are regarded as Asian. In the UK, people from India, Pakistan, Bangladesh, Nepal and Sri Lanka are referred to as Asian.

While the title of this book might suggest that it will cover all major religions of the East, the study seeks to cover the civilisations of the East proper, in the geographical sense of the term. That is why some of the chapters refer to the term “East” in its geographical sense. Major Asian countries such as China, India and Japan are mentioned in various chapters in their geographical sense, rather than in the sense of the civilisations that they represent. Therefore, the title of the book is representative of the content of the book. When people speak of “Eastern civilisations”, they are usually referring to the countries east of Iran, as the countries west of Iran are basically Middle Eastern or Arab or Gulf countries, with a predominantly Islamic civilisation. This is also the case in the literature of social science and religious studies. Thus, the word “Eastern” in the title of this book refers to the East proper – that is, the civilisations of the countries east of Iran. Although countries such as Afghanistan, Pakistan, Bangladesh and Indonesia are predominantly Islamic these days, they were part of the Buddhist and Hindu civilisations before the advent of the relatively modern Islamic religion and its arrival in South and Southeast Asia.

In fact, the Indus valley – now in modern-day Pakistan – is where both Hinduism and Buddhism flourished. While the prevailing religion in these countries today may be Islam, they have strong Hindu-Buddhist heritage, including temples, and religious and ancient artefacts. In the recent past, both Pakistan and Indonesia decided to unearth and revive the traces of their Buddhist heritage, with a view not only to promoting tourism, but also to preserving their heritage. Bangladesh is another country with a predominantly Muslim population, but whose culture, language and tradition are very much rooted in Hinduism. Even Japanese Shintoism was influenced by Buddhism, which in turn was influenced by Hinduism. Therefore, the source of all major civilisations of the East proper is the main Hindu scripture, the Rig Veda. It is conceivable that even the Muslim countries of the Gulf region perhaps practised some form of Hinduism before the advent of Islam. This is because prior to the advent of Islam, idol-worshipping – a characteristic of Hinduism – was practised in some communities in the Gulf countries.

²⁵ As Patten states, “Asia is a rather Western concept: ‘east’ or ‘sunrise’ it means in the original Assyrian”; Chris Patten, *East and West* (Macmillan, London, 1998), p 120.

Furthermore, since Asia is home to all major religions of the world – including Christianity, Islam, Judaism, Hinduism, Jainism and Buddhism – all of them must be included within the term “Eastern” civilisations. Six hundred years before the Magna Carta was adopted, the Prophet Mohammed drafted the Charter of Medina,²⁶ which contained more progressive human rights principles than the Magna Carta. All major religions and spiritual ideas came from the East and some of them became “Western” in due course. Therefore, it is not possible to examine the values of all these major religions of the world in a single volume of this nature; nor is that the objective of this volume. A study of the contribution of Islamic civilisation would be a fascinating project, as this great religion has so many human rights tenets embedded in it;²⁷ but that is not the focus of this study, since Islam is a global religion with a particular following, mainly in the Middle East and North Africa, and in its origins is Middle Eastern rather than Eastern proper. Hence, the focus in this volume is on Hinduism and Buddhism, the primary religions of the East proper. The civilisation that flourished in the Hindu-Kush region, the Indus Valley and the Gangetic plains came to be known as the Hindu or Aryan civilisation; and its major offshoot is Buddhism, which spread further to the east to China and Japan and influenced indigenous beliefs and religions such as Confucianism in China and Shintoism in Japan. Thus, the root of all major religions east of Persia is Hinduism, which in turn has its roots in the Sumerian, Babylonian and Zoroastrian belief systems.

The people in the Asian civilisations that developed along the Indus, Ganges and Huang Ho river basins were initially worshippers of the forces of nature, similar to other ancient civilisations. They all belonged to one religion. Gradually, the civilisations around the Indus, Ganges and Huang Ho, which were evolving simultaneously and independently of each other, also became more sophisticated. Their philosophers started to question traditional patterns of thinking and developed new ideas to manage society better and to address the sufferings of the people. It was in the Indus and the Ganges river basins

²⁶ The Charter of Medina, also referred to as the Constitution of Medina, is based on two agreements concluded between the clans of Medina and the Prophet Muhammad soon after the Hijrah or emigration to Medina in 622 AD. The Charter established the muhājirūn – that is, the early Muslims who followed Muhammad, on a par with the eight clans of Medina. It also regulated the relations of the Muslims with the Jews of Medina. Yetkin Yildirim, “The Medina Charter: A Historical Case of Conflict Resolution”, 20(4) *Journal of Islam and Christian-Muslim Relations* (2009), pp 439–50.

²⁷ See generally Abdullahi An-Na’im, *Islam and Human Rights* (Routledge, London/New York, 2010); Mashood Baderin, *International Human Rights and Islamic Law* (Oxford University Press, Oxford, 2005); Javaid Rehman, *Islamic State Practices, International Law and the Threat from Terrorism* (Hart Publishing, London, 2005).

that the early religions, Hinduism and Buddhism, flourished. Buddhism was gradually adopted in much of Asia. It was taken to China from the passes in the Hindu-Kush region and along the Nepalese Himalayas, and from there it spread rapidly both within China and to Japan, Korea and Vietnam. Hinduism likewise spread throughout much of South and Southeast Asia, thereby making Buddhism and Hinduism the main Asian religions.

Islam was a later arrival to South Asia. Prior to Islam's arrival in South Asia, the ancestors of today's Muslim people living in modern-day Pakistan, Afghanistan and part of Iran would have been Hindus and Buddhists.²⁸ The Buddhist statues built in the Bamiyan cliffs of Central Afghanistan are a testimony to this, though the Taliban destroyed many of them in 2001.²⁹ Indonesia – the country with the largest Muslim population in the world – is also home to the largest Buddhist monument in the world, the Borobudur; and the image of the Hindu god Ganesh is included on Indonesian banknotes. Even the name of one of the main provinces of Pakistan, Punjab, is a Hindu-Sanskrit name: it is the result of the combination of two Sanskrit words: panch (five) and aap (waters). Joined, they make Panchaap, which later became Punjab. It refers to the five rivers of the province.

Although there is no universal consensus on an absolute, binding definition of “human rights”, for the purposes of this study, “human rights” are those rights that are included in the 1948 Universal Declaration of Human Rights and in the other nine core UN human rights treaties that have received near-universal acceptance of states.³⁰ The concept of “human rights” is organic and will continue to evolve with the evolution of society, which entails the recognition and addition of new rights, as well as new or expanded definitions of existing rights. The definition of “human rights” varies from one society to another, and from secular societies to religious societies. What was not a human right in a particular society yesterday may become a right today, and what is not a right today may well become a right tomorrow as society advances. However, it is generally agreed that the human rights protected in

²⁸ See, for an account of how Buddhism spread from North India to modern-day Pakistan and Afghanistan, and then on to China: Jana Igunma and San San May (eds), *Buddhism: Origins, Traditions and Contemporary Life* (British Library, London, 2019), p 19.

²⁹ There were two sixth century monumental statues of Gautama Buddha carved into the side of a cliff in the Bamiyan valley in the Hazarajat region of Central Afghanistan.

³⁰ Currently, there are around 130 separate international human rights instruments (conventions, protocols, declarations, resolutions, codes of conduct and statements of standards and principles) which form the corpus of international human rights law. These instruments form the basis upon which the UN human rights institutions.

the nine core UN human rights treaties should be included within the universal definition of “human rights”.³¹

When discussing human rights, this study is not only referring to human rights in the modern sense of the term – that is, the human rights developed mainly after the establishment of the United Nations and within the framework of Western political thought. Rather, this study is considering human rights in a wider sense and in a much earlier historical context. Elements of human rights and good governance were in existence in many non-Western civilisations across Asia, Africa and Latin America, albeit without being fully developed or documented. Moreover, further development of human rights in these places was diminished when they came under foreign subjugation and colonial rule. The Buddhist, Hindu and Islamic traditions have always had their own elements of human rights built into their religious scriptures. However, when these countries gained independence, most of them embraced Western concepts of democracy and human rights which they borrowed from their colonial rulers. For instance, unlike America, an offshoot of Britain, India had its own Eastern ancient and rich religious, political and cultural heritage, which it could have brought to bear when developing its own distinctive system of governance upon independence. But it did not do so.

Although Mahatma Gandhi led the campaign for Indian independence against the British, relying on the principle of non-violence or Satyagraha drawn from Hindu and Buddhist religious teachings, when it came to establishing a system of government for an independent India, he – along with Pandit Nehru – adopted a Western-style democracy and a British system of government. This is one reason why critics of Nehru, and of the highest echelons of post-independent India, claim that the British left India by handing over power to their own Indian protégés. Historians will tell us why Gandhi and Nehru did not think of developing a system of governance for India based on Eastern values or Hindu or Buddhist values. After all, India had a system of government prior to the colonial period. Going even further back in history, India had elaborate scriptures concerning statecraft such as Kautilya’s *Arthashastra*³² or even the *Mahabharata*,³³ which contains the teachings not only of Krishna, but also of the great warrior and statesman Bhishmapitamaha, a highly revered elder guardian of both the Kauravas and Pandavas, which faced each other on the battlefield of Kuruchhetra in this epic war. After the war of *Mahabharata*

³¹ See Surya P Subedi, *The Effectiveness of the UN Human Rights System: Reform and the Judicialisation of Human Rights* (Routledge, London/New York, 2017), ch 2.

³² LN Rangarajan, *Kautilya: The Arthashastra* (edited, rearranged, translated and introduced) (Penguin Books, India, 1992).

³³ See for an English translation of this great epic, Kamala Subramaniam, *Mahabharata* (Bharatiya Vidya Bhavan, Bombay, 1977).

was over, Bhishmapitamaha imparted important wisdom of governance and statecraft to the victorious Pandavas while addressing Yudhishtira.

Those elements of human rights integral to the ancient Hindu scriptures such as the Mahabharata or Kautilya's Arthashastra would not have been enough to develop a fully functional system of governance suitable for twentieth century India. For instance, the Hindu polity was not sufficiently developed to cover all aspects of modern governance, such as holding elections to positions of power. However, there was a strong base upon which to build and improve a system of government founded on Eastern philosophy. It is possible that Gandhi saw in Western democracy the tenets of Hinduism and Buddhism and Hindu-Buddhist ideas of good governance, and thus had no difficulty in embracing a more advanced Western system of democratic governance. After all, many of the principles that underpinned the Universal Declaration of Human Rights of 1948 can be found in both Hinduism and Buddhism. After reading law in England and practising it in South Africa, Gandhi may have concluded that a ready-made Western system of democratic governance would be best suited to post-independence India, with all its diversity.

3. THE ROOTS OF EASTERN CIVILISATIONS

When enquiring into the origins of the values of Eastern civilisations, one must go all the way back to the Rig Veda, the earliest of the Hindu scriptures which served as the foundation of law (known as dharma), religion, culture and morality. According to *The Times Atlas of Ancient Civilizations*³⁴ and *The Harper Collins Atlas of World History*,³⁵ the oldest of all religions is Hinduism and the Rig Veda³⁶ is the world's oldest book of the Hindus, composed in Sanskrit in antiquity. The word "Sanskrit" itself means "sophisticated" or "refined", and it is one of the oldest and most systematic languages in the world. Sir William Jones, speaking to the Asiatic Society in Calcutta in 1786, had the following to say about Sanskrit:

The Sanskrit language, whatever be its antiquity, is of a wonderful structure; more perfect than Greek, more copious than Latin, and more exquisitely refined than

³⁴ Chris Scarre (ed), *Atlas of Ancient Civilizations*, Part 6: South Asia (Times Books Limited, London, 1989), p 4.

³⁵ Norman Stone *et al* (ed), *Harper Collins Atlas of World History* (3rd edition) (Borders Press in association with Harper Collins, Ann Arbor, 1998), p 72.

³⁶ HH Wilson, *Rig Veda Samhitaa: A Collection of Ancient Hindu Hymns* (W.H. Allen and Co, Oxford, 1850), (Adamant Media Co, Boston, 2004); Wendy D O'Flaherty, *The Rig Veda: An Anthology* (Penguin Books, London, 1981); Prasanna C Gautam, *Modern English Translation of The Rig Veda Samhitaa*, Vols I-IV (Bharatiya Vidya Bhavan, Mumbai, 2014).

either, yet bearing to both of them a stronger affinity, both in the roots of the verbs and in the forms of the grammar, than can possibly have been produced by accident; so strong, indeed, that no philosopher could examine them all without believing them to have sprung from some common source, which perhaps no longer exists.³⁷

The ancient civilisations of Mesopotamia, the Indus Valley and the Yellow River have left their own marks on the present-day thinking and values of Asian people. The psyche of nearly half of the world's population residing in Asia is influenced by this rich heritage. As stated by Freeman and Shearer, the history of many Asian nations began “long, long ago, when even the gods were young”.³⁸ Weeramantry, former Justice and Vice-President of the International Court of Justice, also states that when cultures such as the Hindu-Vedic-Aryan culture were already old, Greece was still in the infancy of its civilisation.³⁹

With regard to the origins of the Hindu-Vedic-Aryans who developed the values of Hinduism and Buddhism, according to *The Times Atlas of Ancient Civilizations*, human beings have lived in South Asia for well over 1 million years and the earliest farmers there can be dated back to the beginning of the seventh millennium BC.⁴⁰ DNA analysis suggests that the Hindu-Vedic-Aryans came to South Asia in various waves of migration from the Central and West Asian region. Citing new research using ancient DNA led by geneticist David Reich of Harvard University and co-authored by 92 scholars from all over the world – many of them leading names in disciplines as diverse as genetics, history, archaeology and anthropology⁴¹ – Tony Joseph states that the South Asian civilisation is the result of multiple ancient migrations, the first of which originated from the Zagros region in Southwest Iran⁴² between 7000 and 3000 BC. These Zagrosians mixed with the earlier inhabitants of the subcontinent – the First Indians, descendants of the Out of Africa migrants who had

³⁷ *Asiatic Researches*, Vol 1, 1788, as cited in John Keay, *India - A History: From the Earliest Civilisations to the Boom of the Twenty-First Century* (Harper Press, London, 2010), p 20; and Shova Sharma Kandel, “The Journey of a Brit-Nepali through Hinduism”, *NEPSOCS Today*, February 2020, pp 64–69 at 67.

³⁸ Michael Freeman and Alistair Shearer, *The Spirit of Asia: Journeys to the Sacred Places of the East* (Thames & Hudson, London, 2000), p 169.

³⁹ See in CG Weeramantry, *An Invitation to the Law* (Lawman, New Delhi, 1998), p 17.

⁴⁰ Chris Scarre (ed), *Atlas of Ancient Civilizations*, Part 6: *South Asia* (Times Books Limited, London, 1989), p 4.

⁴¹ Vagheesh M Narasimhan *et al*, “The Genomic Formation of South and Central Asia”, www.biorxiv.org/content/biorxiv/early/2018/03/31/292581.full.pdf.

⁴² Tony Joseph, “How ancient DNA may rewrite prehistory in India”, BBC News, www.bbc.co.uk/news/world-asia-india-46616574.

reached India around 65000 years ago – and together they went on to create the Harappan civilisation. He adds that:

In the centuries after 2000 BCE came the second set of immigrants (the Aryans) from the Eurasian Steppe, probably from the region now known as Kazakhstan. They likely brought with them an early version of Sanskrit, mastery over horses and a range of new cultural practices such as sacrificial rituals, all of which formed the basis of early Hindu/Vedic culture.

The wisdom of these people – to be found in the two interrelated main ancient religions of Asia, Hinduism and Buddhism, both emanating primarily from the values and philosophies of the Rig Veda – has shaped the civilisations of the continent for millennia.

While China is one of the birthplaces of mankind,⁴³ South Asia is the spiritual heartland or spiritual rainforest of Asia. The north Indian city of Varanasi, the citadel of Hinduism, has been described by Western explorers as “the oldest centre of pilgrimage and the most extraordinary city in the world”,⁴⁴ and as “the Athens of India”. According to Freeman and Shearer, this city – known in ancient times as Kashi, “City of Light” – was already a thriving centre of civilisation long before the days of Babylon, Solomon’s Temple or the glories of Nebuchadnezzar.⁴⁵ Born in Lumbini (now in Nepal) more than 500 years before Christ, Buddha, a solitary seeker of truth, went on to become a revered figure in many parts of Asia. Buddhism spread from the northeastern tip of South Asia, Nepal, to the southernmost tip of the sub-continent, Sri Lanka; from the west, Afghanistan, to the east, Tibet and China, and all the way to Japan; and from the north, Central Asia, to the south, Indonesia. Buddha’s teachings – including meditation, mindfulness, yoga and non-violence – have now become part of people’s daily lives around the globe and Buddhism is spreading fast in the Western world. The philosophy of yoga,⁴⁶ which began

⁴³ Zhang Yingpin and Fan Wei (eds), *The History and Civilization of China* (Central Literature Publishing House, Beijing, 2003), p 2.

⁴⁴ Michael Freeman and Alistair Shearer, *The Spirit of Asia: Journeys to the Sacred Places of the East* (Thames & Hudson, London, 2000), p 63.

⁴⁵ *Ibid.*

⁴⁶ Yoga was developed in the Vedas and the Upanishads to train the mind and enable it to concentrate on enhancing one’s intellectuality and attaining internal peace. The idea was that mind is always flying to this and that, but one must always practise concentrating the mind on the Brahman. The mind is naturally restless, going hither and thither, but it can rest in the sound vibration of inner self. A whole section of the Bhagavad Gita is devoted to all kinds of techniques of yoga (6.12–6.29). See Bhaktivedanta Swami Prabhupada, *Bhagavad-Gita as It Is* (The Bhaktivedanta Book Trust, Los Angeles, 1986), pp 30 and 319–38. Initially from the Vedas and Upanishads, the yoga practices were developed in Patanjali’s *Yogasutra*, a practice manual, com-

in ancient Vedic thought around 3000 BC and was subsequently developed in various Upanishads,⁴⁷ has now become a global phenomenon, varying in its manifestations in different areas.

China and India, the two largest Asian states, were the largest economies in the world for centuries prior to the colonisation period, and are now poised to reassert their status as economic powerhouses of the future. Before the arrival of the Europeans and the Opium War of 1840–42, China had been the greatest civilisation on earth. The great inventions of ancient China – including the compass, gunpowder, paper and printing – had a significant impact on the world at the time. Taking advantage of the invention of the compass, Chinese sailor Zheng He embarked on an epic voyage to the Occident with a vast fleet of 200 vessels, returning to Nanjing in 1407 AD⁴⁸ – approximately 80–90 years before the “discovery” of America in 1492 AD by Columbus and the navigation of the Cape of Good Hope by Vasco da Gama. The Asian continent is a mystical land, with its own complex cultures, religions, mythologies and legends, and diversity in its cultural, societal and natural worlds. Inherent in most Asian religions is a broad spectrum of philosophical thoughts and writings. The Hindu philosophy and the Buddhist philosophy are two of the most prominent, and their core values are similar.

Hinduism today has around 1.4 billion adherents, representing about 25 per cent of Asia’s population, and is the largest religion in Asia, spread across a vast territory, from India and Nepal to large communities in Bangladesh, Pakistan, Bhutan, Sri Lanka and Indonesia. Many people of Indian and Nepali origin in countries such as Burma, Singapore and Malaysia also adhere to Hinduism; as do many people in Mauritius, Suriname and Fiji. Buddhism has a substantial following across Asia, from Nepal, Bhutan and Sri Lanka in South Asia to Cambodia, Thailand, Myanmar (Burma), Laos and Singapore in Southeast Asia; and from China and Mongolia in the mainland to Japan, North and South Korea and Vietnam in East Asia.

posed some 3000 years ago. Although Hinduism/Buddhism and yoga are united, one does not have to be a Hindu or Buddhist to practise yoga; nor does one have to be religious to be a Hindu. In Sanskrit, sounds themselves carry the actual meaning of the words. For instance, the chanting of the word for peace, “shanti” or शान्ति, itself sounds peaceful and brings inner peace to those who chant it properly.

⁴⁷ Both the Svetasvatara and Katha Upanishads provide details descriptions of the techniques of yoga. See S Radhakrishnan, *The Principal Upanisads* (edited with introduction, text, translation and notes) (Harper Collins Publishers, George Allen & Unwin, London, 2012), p 139.

⁴⁸ Zhang Yingpin and Fan Wei (eds), *The History and Civilization of China* (Central Literature Publishing House, Beijing, 2003), pp 156–57.

4. HUMAN RIGHTS AND HUMAN RIGHTS VIOLATIONS IN ASIA

As a vast and populous continent, Asia has been the location of many human tragedies in modern times. The partition of India in 1947 led to the largest human migration in history. Millions of people migrated from India to Pakistan and vice versa. The Vietnam War remains the most dreadful of international conflicts in the post-Second World War period, during which US forces dropped deadly napalm bombs on suspected Viet Cong positions in 1965. In terms of internal wars, the Syrian Civil War, during which Aleppo was destroyed, is one of the most horrendous instances. The Kashmir conflict and the Israeli-Palestinian conflict are among the most protracted conflicts in Asia. The Khmer Rouge regime in Cambodia, the Rohingya crisis in Myanmar and the Saudi Arabian-led intervention in Yemen caused the most terrible human suffering. Notable campaigns for democracy and human rights of historical proportions include the Arab Spring of 2011–12, the Tiananmen Square protests of 1989 and the Hong Kong protests of 2019.

Despite being the home of largely peaceful religions such as Buddhism and Hinduism, Asia remains the only continent without a regional or sub-regional human rights treaty, or a human rights mechanism to protect the rights of the people, hold governments to account and bring perpetrators to justice. Many Asian states – such as Nepal and Cambodia – have ratified most of the core UN human rights treaties, thus subjecting themselves to international scrutiny. Still, the degree of special protection enjoyed by the populations of other continents which have committed themselves to regional human rights mechanisms is not available to the people of Asia. The Association of South East Asian Nations (ASEAN) did form the ASEAN Intergovernmental Commission on Human Rights in 2009 and adopted the ASEAN Human Rights Declaration in 2012, but this is a very weak mechanism.

Despite the existence of these initiatives, human rights violations are a common occurrence in the ASEAN region. It is feared that the weak Commission may be used as a shield to deflect criticism, rather than a tool to stop human rights abuse in the region. This is because many ASEAN countries were vocal proponents of the “Asian values” discourse of the 1990s, which promoted an Asian exceptionalism to human rights. Many Asian countries with autocratic or semi-autocratic regimes have sought to justify their lack of adherence to international human rights standards by invoking so-called “Asian values”, stating that these differ in some respects from Western values and claiming that international human rights standards reflect Western values. These Asian countries advocate a relativist approach. For instance, in order to

justify the Communist party rule of China, it is often said that the country is developing “a new system of governance with Chinese characteristics”.

Several questions arise from the tendencies of autocratic governments in Asia to escape the human rights obligations enshrined in the UN human rights instruments in the name of so-called “Asian values” or cultural relativism. What are Eastern values, or Indian values, or Chinese values? Are they different from Western values? How do we infer these values and what is the basis of the claim of so-called “Asian values”, or of a value system with Chinese characteristics? Where do these characteristics come from? Are they the characteristics of the Communist Party of China, or are they based on ancient Chinese history and philosophy? This study seeks to find answers to these questions.

5. ORGANISATION OF THIS STUDY

The first few chapters of this study explore what Hindu-Buddhist or “Eastern” values are and whether they differ from Western values when it comes to the protection and promotion of human rights. They closely examine the values of Hinduism, which are older than and have deeply influenced the values of Buddhism. Hindu and Buddhist values together constitute the foundation of the culture, tradition and psyche of nearly one-third of the world’s population that resides in the continent of Asia. Accordingly, Chapter 1 analyses the evolution of Eastern belief systems: it describes selected scriptures from the East and looks at how these texts have shaped the lives and philosophies of peoples living in the East. Chapter 2 examines the major principles in Hinduism and Buddhism that support conceptions of human rights in the broader sense of the term. Chapter 3 explores the principles of humanitarian law in Hinduism, with special reference to the notion of just war. In doing so, it examines the notions of right and wrong, fairness and just and unjust conduct in Hinduism. Chapter 4 examines the situation of human rights in modern China. Chapter 5 assesses the impact of the shift of economic power and potentially political power to the East on human rights.

The final chapter of this study focuses on the journey of Cambodia – an Asian country with an ancient civilisation – towards democracy, rule of law and human rights, as a case study based on the author’s experience of serving as the UN Special Rapporteur for Human Rights in Cambodia for six years. Over the course of his tenure, he witnessed first-hand Cambodia’s attempts to transition from its tragic past to a peaceful democracy, and assisted both the government and the opposition party and other stakeholders in Cambodian society in achieving their objectives. Cambodia is a country whose heritage embodies the values of both Hinduism and Buddhism. For instance, one can glean this mixed heritage from its art, architecture and the writings on the

walls of the famous Angkor Wat, one of the ancient wonders of the world.⁴⁹ Therefore, Chapter 6 presents the author's reflections on his endeavour to promote human rights, democracy and the rule of law in Cambodia. The objective is to analyse the challenges and opportunities for a country with a Hindu-Buddhist heritage (Cambodia) in embracing modern conceptions of human rights as outlined in various UN human rights treaties.

Accordingly, this study includes in appendices three documents to illustrate the point. Appendix 1 is a report of the present author in his capacity as the Special Rapporteur to the UN Human Rights Council, which focused on Cambodia's judicial reforms. Appendix 2 contains the final report of this Special Rapporteur outlining the progress made on judicial, parliamentary, electoral and land reforms. Appendix 3 is the final statement of this rapporteur to the UN Human Rights Council, summing up his work as the longest-serving UN Special Rapporteur in Cambodia. The intention is to make these documents easily and readily available to readers by including them in this book. It also is hoped that the case study of Cambodia and the three appendices will give readers a better understanding of the human rights challenges of an Asian country with a Hindu-Buddhist heritage, and of how the UN Special Rapporteurs can assist such countries in their journey towards stronger democracy, genuine rule of law and greater respect for human rights.

This is a volume of collected articles; and yet it is more. The chapters are wide ranging, but reflect some common themes, as this introduction highlights. While this introduction and Chapters 1 and 2, as well as the concluding chapter, are new, Chapters 3 to 6 are revised versions of articles published in various periodicals by the present author. Their particulars are given at the commencement of each. The author owes thanks to the editors and publishing houses of the journals concerned for their permission to use the relevant materials for this volume.

Finally, it should be stated that the objective of this volume is not to defend or promote or justify Hindu or Buddhist values and philosophies, but to bring to the reader the core values of these two great Eastern religions or belief systems – in particular, those Hindu and Buddhist values concerning human rights in the wider sense of the term – and to analyse the contribution that these two major Eastern civilisations have made to the development of the modern concept of human rights. These are the same values recently employed to promote and protect human rights in countries such as Cambodia which represent a blend of both Hindu and Buddhist heritages. The following words of Confucius resonate with the author: "The Master said: To learn something and

⁴⁹ See generally, Michael Freeman and Claude Jacques, *Ancient Angkor* (River Books Ltd, Bangkok, 2003), pp 14–21.

then to put it into practice at the right time: is this not a joy?"⁵⁰ It indeed was a joy for the author to put into practice in Cambodia the theoretical knowledge of human rights that he gained as a scholar, and he is pleased to share this experience with the readers of this study. As stated in the following verse in the Rig Veda (I.89.i), we should welcome noble thoughts from every side (आ नो भद्राः क्रतवो यन्तु विश्वतः।) that enhance our understanding of the origins of human rights as universal values and contribute to the protection and promotion of them. Many of the tenets of Hinduism are often misunderstood by non-Hindus and Hindus alike, especially by Hindu zealots. Therefore, the aim of this study is to enhance the understanding of the values of Eastern civilisations, and in particular those Eastern values which have informed the development of human rights in different civilisations. In doing so, this study may provide further impetus to recognise the universality of human rights drawn from different civilisations.

⁵⁰ *The Analects of Confucius*, 1.1, as cited in Chris Patten, *East and West* (Macmillan, London, 1998), p 84.