

Restoring Indigenous sovereignty and creating alternative civic space and responsibilities in Asia

The political situation in many countries of Asia has always been volatile. As a result, these countries have long suffered from internal conflicts and their populations from attacks on their freedoms. In this context, Indigenous Peoples' interests have randomly been considered by national governments, while violence against them and violations of their rights have become routine. Recognition of the right of Indigenous Peoples to self-determination will not only help mitigate historic injustices, but will also serve to strengthen weak democracies in the continent.

By Gam A. Shimray - March 1st 2022

During the last decade, the weaknesses of Asian democracy begun to expose itself. In recent years, several Asian democracies have been rapidly drifting towards centralization and autocracy. The situation has worsened during the pandemic with legislative developments in several countries having detrimental consequences on the rights of Indigenous Peoples (IPs). These [legislative developments](#) include corporate stimulus and compensation such as automatic renewal of licenses for extractive industries, opening up new environmentally sensitive areas for mining and top-down pandemic solutions that disregard Indigenous Peoples' rights.

In addition, the military in Myanmar again took control on 1st February 2021 followed by nationwide mass protest. As a result, at the time of writing, the number of people killed by the

junta's armed forces [approached 1,500 \(including women and children\) and 12,000 people have been arrested](#). Reports of killing, arbitrary arrest, detention, rape and torture continue till date.

Instability, conflict and incomplete transitions

To understand the political instability in Asia, we need to take a look at the history of democracy in Asia. Historically, for most Asian societies, the concept and practice of modern-day democracy is new. One may say that democracy, that has some semblance with modern day democracy, was in practice in the precolonial times perhaps was only among the tribes who are today referred to as 'Indigenous Peoples'. Several Indigenous Peoples have been governing themselves with their organic form of democracy (but which was different from liberal democracy that has become the predominant model today). However, Indigenous forms of democracy was localized, and, in most cases, it did not extend beyond their communities.

The adoption and transition towards democracy in Asia have on no account been smooth. Most of the democratic countries in Asia have not seen an uninterrupted history of democratic rule. And the deviations in the region, in terms of authoritarian government, suppression of human rights, civil conflict and violence, have frequently been severe. There is little empirical evidence for the effect of the rule of law on State practice. The region's social conflicts have been severe, and the ability of social groups or civil society to use formal political institutions to resolve, mediate, or mitigate them has been much less effective than elsewhere.

These trends of repression, violation of human rights and almost shunning of justice for citizens is a manifestation of the weak foundation of democracy and institutions of states as well as power struggles and corruption in Asia. Unprecedented crackdown and assault on judiciary, independent media, civil society, and opposition parties in several Asian countries indicates that they are rapidly drifting towards autocracy, authoritarianism and populist governments. Though democracies in Asia cannot be brought under a single category, they may be described as defective democracies.

Democratic transitions, such as the Philippines in the 1980s, Indonesia in the late 1990s, Nepal in the 2000s, have remained incomplete. Other countries, such as Laos, Vietnam and China are still under de-jure, and Cambodia under a de-facto one-party rule. In Myanmar, the military has taken

back control over the government; and in Thailand, tradition of high tolerance towards one another and towards other societies is yet to produce a stable pluralistic democratic state. India too is witnessing unprecedented assaults on its autonomous institutions such as the judiciary, the central bank, the free press and is experiencing a spike in internal racism and fundamentalism under the present right-wing populist Modi government proving to be the world's largest illiberal democracy.

Impact of shrinking civic space on Indigenous Peoples

There are approximately over 2000 ethnic groups who self-identify or are considered Indigenous Peoples with their own distinct culture, identity and customary social organization in Asia. Their population numbers [around 411 million in total](#).

The continuing shrinking of democratic space in Asia has made it increasingly difficult for Indigenous Peoples in their struggles for transformative changes to ensure their rights, particularly their right to self-determination and the right to their lands, territories and resources. Worse, governments have used the Covid-19 pandemic for backtracking existing protections for Indigenous Peoples, and for intensifying violence, killings and criminalization of human rights activists across the region.

The [2020 Global Witness](#) report revealed that there were 27 killings of activists in Asia for peacefully defending their lands and standing up to the destruction of nature. The disproportionate number of attacks against Indigenous Peoples continues since the past few years. According to the report globally Indigenous Peoples were the target of 5 out of 7 mass killings recorded in 2020. The opposition and legitimate actions by Indigenous Peoples to defend their lands and resources are often met with militarization and repression, resulting in more human rights violations. Overall, access to justice is almost non-existent and the human rights situation in Asia continues to deteriorate.

Shrinking civic space has also brought out the reality of deep dissatisfaction with democracy in many democratic countries across the globe. There are sections of society, especially the minorities, who feel deeply that they are neither heard nor seen. As a result, there are also [increasing voices that autocratic systems are more efficient in bringing about economic growth](#).

However, the experience in Asia shows that the price people must pay for this alleged efficiency under authoritarian regimes are the loss of freedoms, rights, representation and pluralism. Not to mention environmental degradation and costs of climate change.

There is a clear need for probing deeper into the underlying problems of political instability, weak governance and the ineffectiveness of the rule of law in Asian countries, at the level of both formal institutions and informal institutions and values that shape democratic practices and the relationship between humans and non-human nature in a polity. Formal institutions such as macropolitical rules defined by constitutions and law matter as they create incentives, mold preferences, and solve (or fail to solve) collective action problems. The informal matrix of norms, beliefs, values, traditions and habits in a society that are embedded in its history are critical for the functioning of formal institutions.

Why self-determination of Indigenous Peoples?

The right to self-determination is a social and political necessity for the continuity of the way of life of Indigenous Peoples in the 21st Century. By adopting the United Nations Declaration on the Rights of Indigenous Peoples, states recognize Indigenous Peoples' unique characteristics and distinct worldviews, that are also expressed in their way of ordering their societies. However, their unique characteristics and systems, that sprang from their intimate association with their lands, are not yet part of the architecture of the states in Asia.

It is the land and their community in which Indigenous Peoples' history and identity is rooted and which ensures their viability as self-determining peoples. Their relationship to their land is neither restricted to material aspects of their culture nor is it a purely an economic relation. The land holds a very deep and spiritual meaning for Indigenous communities, and their relational values developed and took roots in their territories. These relational values and attachments are range of human emotions that becomes essential for their existence. These attachments may start from certain attachments e.g., within the family, clan and community, and with specific areas such as sacred sites, the rivers and mountains or with certain flora and fauna that remain with them throughout their existence.

Crystallization of these relational values led to the evolution of an ethos that is present among most Indigenous Peoples, an ethos that represents the quality of being and living within their communities and with non-human nature, as Colin Nicholas, the founder of The Center for Orang Asli Concerns, [states](#) in his article Indigenous Spirituality and Governance, “within this traditional territory, Indigenous Peoples develop traditions and belief systems that are the basis of their social organisation, economic system and cultural identification”.

At the core of this *ethos* is the concept of harmony with non-human nature and harmony within the community. Since Indigenous spirituality is about acknowledgement that they are equal beings with others - animate and inanimate, Indigenous Peoples [are very concerned with the proper behaviour](#) that is required for the harmonious and symbiotic coexistence of all the natural and supernatural elements in their world. This logic of harmony and symbiotic coexistence diffuses and influences the lives of the Indigenous Peoples. Thus, the value of equality and sustainable utilization of resources found expressions in their way of life and institutions.

For the duration of the Indigenous rights movement in the post-colonial period, civic spaces and governance structures at national and international levels have excluded indigenous institutions and practices and ways of knowing and being. In essence, the state structure and civic space has always been closed to indigeneity. Indigenous Peoples have been struggling against this, with each movement achieving a variety of milestones that have ultimately led to states conceding some recognition and rights in a few countries.

Customary institutions and law: principles and values

The customary institutions and law of Indigenous Peoples, by and large, are predicated on the values and principles of establishing a consensual political order, respecting diverse opinions in a community. Pursuing these values and principles, their social objectives are aimed at achieving bonding and unity through reciprocal relationship and reconciliatory approach to conflicts in their justice systems.

Customary law has qualitative differences with positive law (statutes, codes and regulations enacted by a legislature or through case laws). Customary law is not merely a step in the evolution of positive law, it is a source of law in many parts of the world since time immemorial. It does not

necessarily evolve into positive law and often the reasons are deliberate treating customary law as higher or more appropriate in several instances.

Customary law is ground up because its acceptance and enforceability come from long standing practices of the people flowing from tacit agreement and supported by reason. In this sense, it is necessary to prove that the custom is continuous, peaceable, reasonable, certain and consistent or it is in consistence with the notion of justice offered by the worldview of the community.

Another important aspect of customary law relates to its spirit of enforcement that distinguishes it from positive law that is by and large based on legal scholarship and legislation. Positive law of states, including democratic states, constantly faces challenges in terms of its legitimacy and social acceptance. In many of the Indigenous Peoples, morality and emotion of law are part of their identity and practiced direct democracy, which is part of their consciousness that spontaneously drive them to follow and implement the law. The motivational force for enforcing the law as part of their good behaviors comes from their deeply held belief systems rooted in their land, spirituality and culture.

In the words of an Australian aborigine, aboriginal peoples' law 'connects people in a web of relationships with diverse group of people; and with our ancestral spirits, the land, the sea and the universe; and our responsibility to the maintenance of this order'.

Similarly, the concepts of interrelatedness and spirituality that infuses customary institutions and law mentioned above are also found in Asia e.g., the Ainu of Japan deeply believe that all living things, not just humans, are all connected (referred to as *ureshipamashor*), and the Semai of Malaysia [believe that humans have a responsibility towards all others whose wellbeing must be ensured \(referred to as *tenhak*\)](#). Such concepts and practices that does not simply depend on rational tradition alone but also on deeply held traditional wisdom and beliefs.

While customary institutions and law vary considerably, the underlying values, principles and beliefs are common among many societies in Asia but may stand in stark contrast in terms of their application and enforcement. For example, in the enforcement of property rights in the western legal regime, the right may be exercised in total exclusion of the right of any other individual.

However, among several Indigenous Peoples, individuals cannot acquire special rights to any part of the communal property managed for common access and use.

The new approaches to self-determination that Indigenous Peoples seek is not only conforming to international human rights law, but also seeks intercultural legal justice, social, cultural and political pluralism to be achieved in consonance with the state in which they now find themselves.

Strengthening democracy to restore indigenous sovereignty

Democracy needs clear representation, pluralism, and a robust culture of debate as well as a deep conviction to the moral foundation of the political institution that society builds. For this, transformative ideas and models are needed. Further, transformative change and strengthening of democracy would be hard to move forward without inevitably addressing the real threat of ecological collapse and climate catastrophe. Therefore, reversing the shrinking civic space and to move towards a transformative path of strengthening democracy, the concept of living in harmony with each other and with nature will have to be at the heart of it.

The right to self-determination is at the heart of Indigenous Peoples' struggle because it underpins Indigenous Peoples' capacity to develop as individuals and as communities based on their unique social order that is determined by themselves. Recognizing the right to self-determination entails democratization and strengthening of democracy in Asia. This challenges the state to revisit its institutional architecture for accommodating and protecting the autonomy and right to self-determination of Indigenous Peoples that is based on self-governance of grassroots communities as the first governing unit of their people or of their nation.

Indigenous Peoples in Asia are colonized peoples and the experience of discrimination, dispossession, and disempowerment that follows colonization is a continuous process. One of the most profound impacts of this has been the weakening of indigenous leadership, and loss of indigenous sovereignty and control over their lives and destinies. A fundamental contributing factor to this has been indigenous children being forced into schools where none of their languages, knowledge and values are taught and being forced to live under governments that are not their own.

In the criticalness of this situation, [Asia Indigenous Peoples Pact's \(AIPP\)](#) initiative to restore the loss of indigenous sovereignty and to create alternative civic space is an effort to address the long-term challenges of criminalization of Indigenous Peoples and Asian democracy that affects the polity. It is also aimed, through critical reflection, at uncovering and recovering the core values governing and organizing indigenous societies in achieving an alternative way of governing.

Gam A. Shimray is a human rights activist and is currently serving his second term as the Secretary General of Asia Indigenous Peoples Pact (AIPP).

AIPP is a regional organization established in 1992 by Indigenous Peoples' movements. AIPP is committed to the cause of promoting and defending Indigenous Peoples' rights and human rights and articulating issues of relevance to Indigenous Peoples. At present, AIPP has 46 members from 14 countries in Asia with 18 Indigenous Peoples' country-level formations (alliances/networks), 30 local and sub-country level organizations.