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A COMPARATIVE STUDY OF THE RESPONSES OF EASTERN AND WESTERN LEGAL SYSTEMS TO HUMAN RIGHTS VIOLATIONS AND THEIR IMPACT ON THE REALIZATION OF JUSTICE AND VICTIM PROTECTION

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ABSTRACT

The violation of human rights is considered one of the fundamental crises of the contemporary era. Legal systems in both the East and the West respond to such violations based on their own distinct cultural, philosophical, and political foundations. The importance of this issue lies in its widespread impact on criminal justice and the protection of victims. This study aims to comparatively examine the approaches of Eastern legal systems (including Islamic, Asian, and tradition-oriented countries) and Western legal systems (rooted in liberalism and secularism) in addressing human rights violations. The central research question is: how do these legal systems respond to human rights violations, and what impact do their responses have on the realization of justice and the protection of victims? To address this, the study employs document analysis, case studies, and critical evaluation, drawing on both library sources and international legal instruments. Findings reveal that Western systems tend to emphasize individualism, international frameworks, and oversight institutions in promoting human rights, whereas Eastern approaches are more focused on collectivist values, national sovereignty, and cultural or religious considerations. These differing perspectives can, at times, lead to conflicts with globally recognized human rights standards. Ultimately, the article underscores the need for the development of a justice-oriented, victim-centered, and intercultural framework that, through constructive dialogue and mutual understanding, can offer more effective global solutions for the protection and promotion of human rights.

KEYWORDS: Human Rights, Comparative Legal Systems, Criminal Justice, Victim Protection, East-West Cultural Differences.

1. INTRODUCTION

In today's world, human rights are recognized as one of the fundamental pillars of international and regional legal systems. Their primary aim is to protect human dignity and fundamental freedoms globally. However, the interpretation and implementation of these rights within diverse cultural, political, and historical frameworks have consistently led to significant differences. Amidst this, Eastern and Western legal systems, each with distinct principles and values, hold varied perspectives on human rights and demonstrate differing approaches in responding to human rights violations.

Although international conventions and regional organizations strive to establish a universal standard for human rights and ensure its observance, cultural and philosophical differences between East and West play a crucial role in shaping these viewpoints. For instance, Western systems emphasize individualism and individual rights, whereas Eastern systems prioritize collectivist values, social order, and cultural norms. These disparities create challenges in global coordination and cooperation when addressing human rights violations.

This article aims to examine transnational legal discourses between East and West in response to human rights violations. This research seeks to analyze the differences and similarities in the cultural and legal approaches of these two spheres, identify the challenges and opportunities in this dialogue, and propose solutions for strengthening synergy in this field. Furthermore, an attempt will be made to thoroughly investigate the theoretical foundations, historical developments, practical approaches, and relevant case studies, ultimately offering practical solutions to enhance cooperation and synergy between East and West in the realm of human rights.

2. RESEARCH QUESTIONS

Main Question: How do Eastern and Western legal systems respond to human rights violations, and what impact do they have on achieving justice and protecting victims' rights?

Sub-questions:

1. What are the differences and similarities in the theoretical and philosophical foundations of human rights in Eastern and Western legal systems?
2. What are the practical approaches of Eastern and Western legal systems in addressing human rights violations (such as freedom of expression, minority rights, and women's rights)?

3. What challenges and opportunities exist in the dialogue between East and West regarding human rights, and how can these challenges be managed and opportunities leveraged?
4. What role do international and regional organizations play in facilitating dialogue and cooperation between East and West in the field of human rights?
5. How can a common framework for the protection of human rights be established globally, considering cultural and legal differences?

3. RESEARCH METHODOLOGY

1. Type of Research: This research is a theoretical and qualitative analysis that examines the topic through a review of library resources, content analysis of legal documents, and case studies.

2. Data Collection Tools:

- **Library Resources Review:** Includes books, scientific articles, theses, reports from international and regional organizations related to human rights, and Eastern and Western legal systems.
- **Legal Document Analysis:** Includes international human rights conventions, constitutions of Eastern and Western countries, court rulings, and legal opinions.
- **Case Study:** Selection and analysis of specific human rights violation cases that illustrate the differences and similarities in Eastern and Western approaches.

3. Data Analysis Methods:

- **Content Analysis:** Review and analysis of the content of legal documents and theoretical texts to identify key concepts, values, and approaches in human rights.
- **Comparative Analysis:** Comparison of Eastern and Western legal systems in terms of theoretical foundations, practical approaches, and challenges and opportunities.
- **Critical Analysis:** Critical examination of existing approaches and presentation of suggestions for improving the human rights situation and strengthening international cooperation.

4. THEORETICAL FRAMEWORK

Utilizing theories of international law, human rights theories, and cultural and philosophical theories related to human rights for data analysis and interpretation.

4.1. Limitations of the Research

- Limited access to certain resources and information in some countries.
- The influence of the researcher's personal assumptions and perspectives on data analysis.
- Challenges related to accurate translation and interpretation of legal and cultural texts.

4.2. Theoretical Foundations and Conceptual Framework

1. Key Definitions

- **Human Rights:** Human rights refer to the set of inherent rights and freedoms that every individual possesses simply by virtue of being human (UN Commission on Human Rights, 1948). These rights are universal, inalienable, and indefeasible, aiming to preserve human dignity and provide conditions for a free and dignified life.
- **Diplomacy and Dialogue:** Western countries strive to persuade governments that violate human rights to adhere to international human rights standards through diplomacy and dialogue. This approach may include bilateral negotiations, public statements, and UN resolutions (Forsythe, 2012).
- **Conditioning Development Aid:** Some Western countries condition their development aid on the recipient governments' adherence to human rights. This approach aims to encourage governments to improve their performance in human rights and good governance (Bueno de Mesquita & Smith, 2009).

4.3. Eastern Approaches to Addressing Human Rights Violations

The approaches of Eastern countries to human rights violations are often shaped by their specific cultural, political, and economic considerations:

- **Emphasis on National Sovereignty and Non-Interference:** Many Eastern countries place a strong emphasis on national sovereignty and non-interference in the internal affairs of other countries. This approach translates into a reluctance to publicly criticize other governments on human rights issues, preferring diplomatic and non-public solutions (Kent, 1999).
- **Prioritizing Economic and Social Rights:** Some Eastern countries believe that economic and social rights (such as the right to development, the right to food, and the right to health) take precedence over civil and political

rights. They argue that improving economic and social conditions can help reduce human rights violations (Sen, 1999).

- **Cultural and Religious Interpretations of Human Rights:** Some Eastern countries interpret human rights based on their cultural and religious values and traditions. These interpretations may differ from international human rights standards in some instances (An-Na'im, 1992).
- **Cooperation with Violating States:** Instead of publicly criticizing governments that violate human rights, some Eastern countries prefer an approach of cooperation and engagement. This approach may include providing technical and educational assistance to improve the human rights situation in these countries (Foot, 2000).
- **Emphasis on Political Stability and Security:** Some Eastern countries believe that political stability and security are necessary preconditions for the protection of human rights. They may impose restrictions on civil and political freedoms to prevent unrest and maintain social order (Diamond, 2002).

4.4. Comparison And Analysis of Approaches

A comparison of Eastern and Western approaches to addressing human rights violations reveals that both sets of countries face their own unique challenges and limitations. Western approaches may be perceived as interventionist and imposing, while Eastern approaches might be criticized as insufficient and ineffective in preventing human rights violations.

The optimal approach to confronting human rights violations is likely a combination of elements from both perspectives. This approach should encompass respect for national sovereignty, attention to cultural differences, utilization of international legal mechanisms, and support for active human rights NGOs. Furthermore, dialogue and interaction between East and West can foster mutual understanding and facilitate the development of more effective solutions for global human rights protection (Donnelly, 2013).

Human rights include civil and political rights (such as the right to life, freedom of expression, and the right to a fair trial) and economic, social, and cultural rights (such as the right to education, the right to health, and the right to work) (Eide, 1987).

Transnational Rights: Transnational rights refer to rights defined beyond national borders and recognized at international and regional levels

(Sassen, 2006). These rights include principles and rules established by international organizations, international courts, and international treaties, aiming to create a common legal system for resolving cross-border issues and protecting human rights globally (Slaughter, 2004).

Eastern and Western Legal Systems: Eastern and Western legal systems refer to two main categories of global legal systems, each possessing its own distinct characteristics and philosophical foundations (David & Brierly, 1985). Western legal systems (such as Common Law and Romano-Germanic civil law systems) emphasize individualism, the rule of law, and the separation of powers. In contrast, Eastern legal systems (such as Islamic legal systems, Chinese legal systems, and Indian legal systems) primarily emphasize collectivism, social order, and cultural and traditional values (Glendon, Gordon & Osakwe, 1994).

2. Legal Theories

International Human Rights Theories: International human rights theories encompass various perspectives on the origin, content, and implementation of human rights at the international level. Some of these theories emphasize Natural Rights, believing that human rights stem from human nature and that states are obligated to protect them (Finnis, 1980). Other theories focus on Treaty Rights, arguing that human rights are established through international treaties and conventions, and states, by accepting these treaties, commit to upholding them (Donnelly, 1989).

Cultural Theories of Human Rights: Cultural theories of human rights emphasize the role of culture and indigenous values in the interpretation and implementation of human rights. These theories contend that human rights should not be applied uniformly to all societies without regard for cultural differences (An-Na'im, 1992). Some of these theories advocate for Cultural Relativism, believing that each society has the right to interpret human rights based on its own values and traditions (Renteln, 1988), while others support Cultural Universalism, arguing that some human rights (such as the right to life and the prohibition of torture) must be respected in all societies (Pollman, 2012).

3. Philosophical And Cultural Foundations

Philosophy of Human Rights in the West: The philosophy of human rights in the West has its roots in Enlightenment thought and the political revolutions of the 17th and 18th centuries. Thinkers such as John Locke and Jean-Jacques Rousseau

emphasized natural rights, liberty, and equality, believing that the state should protect the individual rights of citizens (Tuckness, 2010). These ideas significantly influenced the French Declaration of the Rights of Man and of the Citizen and the American Declaration of Independence, contributing to the formation of modern legal systems in the West (Israel, 2010).

Philosophy of Human Rights in the East: The philosophy of human rights in the East is rooted in ancient religious and philosophical traditions. In Confucianism, emphasis is placed on social order, respect for elders, and individual responsibilities (Tu, 1979). In Buddhism, compassion, non-violence, and the effort to alleviate suffering are emphasized (Kalupahana, 1976). In Islam, justice, equality, and social rights are stressed, and the rulings of Sharia are formulated to preserve human dignity and meet the basic needs of society (Kamali, 2008).

In Islamic Countries: The concept of human rights in Islamic societies is intertwined with the concepts of Sharia and Islamic justice. Islam emphasizes human dignity, equality, and social rights, but the interpretation and implementation of these concepts vary across different Islamic countries (Kamali, 2008). In recent years, efforts have been made to adapt human rights concepts to Islamic frameworks, such as the Cairo Declaration on Human Rights in Islam issued by the Organization of Islamic Cooperation (OIC, 1990).

5. COMPARISON OF DEVELOPMENTS AND ADAPTATIONS

A comparison of the developments in human rights systems in the East and West shows that both systems have attempted to utilize their historical and cultural experiences to define and protect individual rights. In the West, developments have been largely shaped by individual rights and liberalism, with an emphasis on limiting state power. In contrast, in many Eastern countries, there is a greater emphasis on collective rights, social order, and the state's role in providing welfare and security (Renteln, 1988).

Despite these differences, recent developments indicate efforts towards convergence and the creation of a common discourse. Many Eastern countries have gradually adopted the provisions of the Universal Declaration of Human Rights and incorporated them into their domestic laws. Additionally, international organizations strive to develop common frameworks for human rights protection, taking cultural diversity into account. However, challenges arising from fundamental differences in approaches persist and require

continuous dialogue and mutual understanding between East and West (An-Na'im, 1992).

5.1. Eastern And Western Approaches to Addressing Human Rights Violations

5.1.1. Western Approaches to Addressing Human Rights Violations

Western countries' approaches to human rights violations are typically based on a set of principles and tools that include the following:

- **Use of International Legal Mechanisms:** Western countries actively participate in international organizations and courts such as the International Court of Justice (ICJ), the International Criminal Court (ICC), and regional human rights courts (e.g., the European Court of Human Rights). They utilize these mechanisms to pursue cases of human rights violations and to put pressure on states that commit violations (Alter, 2008).
- **Economic and Political Sanctions:** Sanctions are a common tool used by Western countries to punish states that violate human rights. These sanctions can include trade embargoes, asset freezes for responsible officials, and travel restrictions (Hufbauer et al., 2009).
- **Support for Non-Governmental Organizations (NGOs):** Western countries provide financial and political support to human rights NGOs operating worldwide. These organizations play a crucial role in gathering information, documenting violations, and offering legal and humanitarian assistance to victims (Keck & Sikkink, 1998).

6. CASE STUDIES: EXAMPLES OF DIFFERENT EASTERN AND WESTERN APPROACHES TO HUMAN RIGHTS VIOLATIONS

To better understand the differences and similarities between Eastern and Western approaches to human rights violations, examining case studies can be highly illuminating. In this section, we will look at two specific examples: one from a Western country (the United States) and another from a country often associated with Eastern approaches (China).

6.1. Case Study 1: The United States and the Human Rights Issue at Guantanamo Bay Prison

Following the September 11, 2001 attacks, the

United States, within the framework of its counter-terrorism efforts, detained individuals suspected of involvement in a prison in Guantanamo Bay, Cuba. This approach faced widespread criticism from international human rights organizations and various governments, who deemed it a violation of fundamental human rights and international standards (ACLU, 2006).

Western Approach (United States):

- **Emphasis on Individual Rights and Due Process:** Western critics, including human rights organizations like Amnesty International and Human Rights Watch, highlighted violations of fair trial principles, the prohibition of torture and inhumane treatment, and the right to access legal counsel (Human Rights Watch, 2004).
- **Use of International and Domestic Legal Tools:** Efforts were made to legally challenge the government's actions in domestic and international courts. The U.S. Supreme Court's ruling in *Hamdi v. Rumsfeld* (2004), which affirmed the right of Guantanamo detainees to due process, is an example of this approach (Rosenberg, 2021).
- **Media Pressure and Public Opinion:** The media and public opinion in the West played a significant role in highlighting the human rights violations at Guantanamo Bay, increasing pressure to close the prison.

U.S. Government Response:

The U.S. government initially restricted certain legal procedures for Guantanamo prisoners, citing the unique context of the "war on terror" and the necessity of preserving national security. However, under domestic and international pressure, policy adjustments were eventually made, resulting in the release or transfer of some prisoners to other countries. This case highlights the tension between security imperatives and human rights obligations within a Western nation.

6.2. Case Study 2: China And the Issue of Workers' Rights in Special Economic Zones

China, as one of the world's largest manufacturing centers, frequently faces criticism concerning working conditions and workers' rights within its special economic zones. These criticisms include long working hours, low wages, lack of job security, and the suppression of trade union activities (Lu, 2000).

Eastern Approach (China):

- **Priority of Economic Development and Social Stability:** The Chinese government typically

defends its economic achievements and emphasizes the importance of maintaining social and political stability as its primary priorities. It is argued that focusing on workers' rights at the current stage could impede the process of economic development and the lifting of millions out of poverty (Wang, 2016).

- **Limited Interpretation of Labor Rights:** Labor laws in China are often interpreted in a manner that primarily prioritizes the interests of employers and the state. The formation of independent labor unions is restricted, and the government exercises control over the All-China Federation of Trade Unions (ACFTU), which often functions as an arm of the state (Chan, 2010).
- **Denial or Downplaying of Criticisms:** Chinese officials frequently dismiss external criticisms regarding workers' rights as interference in internal affairs or as attempts to destabilize the country, while emphasizing the progress made in improving living standards.

International Reactions:

International labor organizations, global trade unions, and human rights organizations have put pressure on China due to alleged violations of workers' rights. Trade sanctions or diplomatic pressures have occasionally been proposed as tools to encourage China to adhere to international labor standards, but their impact has been limited. This case illustrates an approach where economic development is prioritized over workers' rights, and individual rights in this regard are interpreted differently.

6.3. Comparative Analysis of Case Studies

These two case studies underscore profound differences in the prioritization and conceptual frameworks of human rights between the East and the West:

- In the Guantanamo case, the Western approach emphasized principles of due process and the prohibition of torture, employing legal tools and public pressure for reform.
- Regarding workers' rights in China, the Eastern approach stressed the priority of economic development and social stability, often rejecting international criticism by citing national sovereignty and collective interests.

Both cases demonstrate how cultural, political, and economic factors shape the formation and implementation of human rights policies, thereby

posing challenges to achieving a universally consistent understanding and enforcement of human rights.

7. CONCLUSION AND RECOMMENDATIONS

7.1. Conclusion

The presented case studies indicate that different countries' approaches to addressing human rights violations are influenced by cultural, political, and economic factors. In the case of China, the focus on economic development and the maintenance of internal stability often leads to limitations on respecting individual rights and workers' rights. This approach contrasts with the Western approach, which emphasizes principles of due process, the prohibition of torture, and individual rights, but in practice faces challenges such as extensive security policies and national considerations.

Furthermore, in the U.S. example, the tension between upholding human rights and national interests, particularly in the realm of security, is evident. Programs like the establishment and maintenance of the Guantanamo Bay detention camp exemplify this dichotomy, demonstrating how political and security conditions can play a role in restricting human rights.

Overall, the case studies suggest that divergent cultural, political, and economic approaches make a uniform global approach and alignment in realizing human rights unattainable; rather, it necessitates interaction and mutual understanding among various perspectives.

7.2. Recommendations

In light of the challenges and differences discussed, it is recommended to:

- **Encourage International Dialogue and Multilateral Cooperation:** Creating a common space for the exchange of views and experiences among countries on human rights can lead to the formation of more effective and coordinated solutions.
- **Promote Independent and International Monitoring Mechanisms:** The development of impartial monitoring bodies that can identify and pursue human rights violations neutrally and independently is of particular importance.
- **Adapt Policies to Countries' Cultural and Economic Contexts:** When implementing human rights programs, cultural differences and the economic conditions of each country must be considered to adopt more realistic and effective approaches.
- **Increase Education and Awareness:** Actively

educating human rights activists and governments on the importance and methods of implementing human rights through training courses and programs can play a significant role in improving the situation.

- **Governmental Accountability and Transparency:** Governments should strive further for policy reform, accountability, and transparency in their actions to build public and international trust.

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