

CHALLENGES TO UNIVERSALITY OF HUMAN RIGHTS

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INTRODUCTION

During the holocaust and Second World War the world witnessed rampant violations of the most basic rights that must be inherent to human existence by virtue of being human. In the post World-War II period many nations raised voices against the grave violations of those basic rights during the war and resolved amongst them to assure that such misdemeanour should not take place again. Thus started a revolution, led mainly by the west, to recognize internationally, certain rights which can be termed as human rights. This revolution indeed brought about two major changes: first was the formation of the United Nations Organization and other was the adoption of the Universal Declaration of Human Rights. Over the years, since then, the nascent concept of human rights has evolved gradually, with the world community and different cultures making contributions to this concept. The fact that these rights were meant to be adopted by the whole international community granted them a universal nature. The Declaration established the concept of certain rights which are universal and available to all humans irrespective of whom they are, where they are and what they are.

However, this remarkable transformation was not devoid of criticism and various scholars of international law started building arguments against the universal application of these human rights. The divide between the west and the east, cultural differences, religious ideological differences were the mainly cited reasons to support the claim that human rights cannot be universal. Advocated of universality of human rights and those who opposed it constantly were at loggerheads with each other. Where on one hand scholars supporting universality of human rights produced evidences that the concept of human rights is the collective effort of all the international community and cultures, on the other the non-believers of universality of human rights raised different arguments challenging this universality.

The present paper mainly focuses on the concept of universality of human rights and the major challenges that it faces. The paper includes in particular the ideas of Rhoda Horward who

describes five major challenges to the universality of human rights, along with the challenge of regional and religious perspective of human rights.

UNIVERSALITY OF HUMAN RIGHTS

The universality of human rights emerged during the 20th century with the UN Declaration of Human rights on the belief that the basic values and principles underlying the concept of human rights are of a universal nature. These values and principles included the concept of individual liberty and freedoms, the belief in democracy and political rights, the acknowledgment of social and economic right. Prior to these, the idea of human rights has been restricted to class of individuals depending on status e.g. individual rights for white male in America.¹

Definition of Human Rights

According to United Nations Office of High Commissioner of Human Rights:

*'Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.'*²

Definition of Universality

The Oxford Dictionary defines “universal” as “of or belonging to or done etc. By all persons or things in the world or in the class concerned, applicable to all cases”³ in other words, saying that human rights are universal is saying that they are the rights of all persons in the world.

Universality is one of the essential characteristics of human rights. By definition, human rights are rights that apply to all human beings and are therefore universal. All human beings are holders of human rights, independent from what they do, where they come from, where they live and from their national citizenship, their community, etc.⁴

¹ Universalism of Human Rights available at <http://www.personal.ceu.hu>

² Available at :<http://www.ohchr.org/>

³ J.B. Sykes (ed.), *The Concise Oxford Dictionary of Current English*, 1174, Clarendon Press , Oxford, seventh edn, 1988.

⁴ Universality of Human Rights by Dr. Peter Kirchsclaeger, Co-Director of the Centre of Human Rights Education, University of Teacher Education of Central Switzerland – Lucerne Available at : <http://www.theewc.org>.

The adoption by the General Assembly of the United Nations of the Universal Declaration of Human Rights on 10 December 1948 signified the birth of contemporary international human rights. The name of the text itself shows that from the beginning, international human rights were linked to the concept of universality. Although the legal status of the UDHR is not so strong as that of several subsequent human rights treaties, it remains the most well known and the most widespread human rights document, and the one with the highest moral status. Interestingly when the United Nations started working on a human rights declaration after World War II, the working title was “ international Declaration of Human Rights”, not “universal declaration”. The change, proposed by the French, was apparently intended to better express the centrality of the individual in the declaration, which in the context of state centered international law was a quite revolutionary feature. This seminal text of international human rights is a clear instance that there can be little doubt that international human rights were and are being formulated to apply to all human beings everywhere around the world.

The principle of universality of human rights is the cornerstone of international human rights law. This principle has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.⁵

Sometimes the statement that human rights are universal is understood to mean that all cultures contributed to the concept of human rights. Ramcharan explains this as follows:

“the concept of human rights is part of the intellectual patrimony of humankind. As civilisations interacted and learnt from one another, concepts of dignity, law, freedom, equality, liberty and rights develop over time. The Universal Declaration of human Rights drew upon the intellectual well-springs of Africa, the Americas, Asia and Europe in a distillation of universal rights.”⁶

However, there is a lobby of scholars of international law who deny human rights the status of ‘universal’. They argue vehemently that universal application of the human rights is unattainable as the diversities in region, religion, culture, philosophies are active contributors to the concept of human rights. More the variations more distant are the human rights from

⁵ Available at : <http://www.ohchr.org/>

⁶ Bertrand G. Ramcharan, “The Universality of Human Rights”, *International commission of jurists Review*, 105, (1994).

being universally applicable. The next part of the paper focus on these challenges to universality of human rights.

CHALLENGES TO UNIVERSALITY OF HUMAN RIGHTS

Rights are certainly not universally-applied today, with oppression, torture and various atrocities committed in many parts of the world. Human rights are challenged by cultural diversity as well. This challenge is taking place in the moral dimension of human rights. Although the UN Conference in Vienna 1993 reconfirmed the validity of the universality of human rights, the universality faced critics from different sides because of its alleged western origin, e.g. in the so-called ‘Asian Values debate’

Cultural divide between the east and the west

A common challenge to this view is the concept of cultural relativism. What the West may consider universal norms in human rights are not applicable in other cultures. Human rights are argued to have developed from Western culture and thus they are inappropriate in application to other cultures.⁷ It has been argued that only Western philosophy places such importance on the individual⁸. Claims based on universal human rights are therefore at risk of being a “weapon of cultural hegemony.”⁹

The Asian Value perspective, which claims that universal human rights is a new form of imperialism, or as Rengger describes, “a mask for Western interests” is the major challenge in establishing the principle of universality.

The so-called ‘Asian values’ perspective emerged during the 1990s after the collapse of the Soviet Union bloc and as a result of the rise of East Asian economies. Although no longer in general use, this concept still proves a useful reference point when considering the cultural relativism of human rights as a championing viewpoint and the premise upon which Asian countries (in particular those in East Asia) rely when defending their own values against the universalism of human rights, as well as a justification for the shortcomings of human rights practices. It refers to values which, distinct from those emerging from European discourse,

⁷ Langlois. A, 19, *Normative and Theoretical Foundations of Human Rights*, Oxford University press, Oxford, 2009.

⁸ *Ibid.*

⁹ *Ibid*

advocate the particularity of human rights and deny their universality.¹⁰ ‘Asian values’ are enshrined in doctrines such as Confucianism. Confucianism protects group rights rather than those of individuals; it also states the duties or obligations owed to society by the individual. This had led many to the conclusion that Asia does not recognise and respect the individual basis of liberties, and that liberalism is not suitable for East Asians.¹¹

Official statements by governments in the region typically make the following claims about the so-called ‘Asian Views’ of human rights:¹²

Claim 1: Rights are ‘culturally specific’. Human rights emerge in the context of particular social, economic, cultural and political conditions. The circumstances that prompted the institutionalization of human rights in the west do not exist in Asia. China’s 1991 White Paper stated that “owing to tremendous differences in historical backgrounds, social systems, cultural tradition and economic development, countries differ in their understanding and practice of human rights.” In the Bangkok Governmental Declaration, endorsed at the 1993 Asian regional preparatory meeting for the Vienna World Conference on Human Rights, governments agreed that human rights “must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional peculiarities and various historical, cultural and religious backgrounds.”

Claim 2: The community takes precedence over individuals. The importance of the community in Asian culture is incompatible with the primacy of the individual, upon which the western notion of human rights rests. The relationship between individuals and communities constitute the key difference between Asian and Western cultural values. Human rights and rule of law, according to the Asian Values are individualistic by nature and hence destructive of Asia’s social mechanism. Increasing rates of violent crimes, family breakdowns, homelessness and drug abuse are cited as evidence that western individualism has failed.

Claim 3: Social and economic rights take precedence over civil and political rights. Asian societies rank social and economic rights and ‘the right to economic development’ over individual’s political and civil rights. Political civil rights, on this view, do not make sense to

¹⁰ Nghia Hoang, “The ‘Asian Values’ Perspective of Human Rights: A Challenge to Universal Human Rights” Available at : http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1405436.

¹¹ Chan, Joseph, ‘Human Rights and Confucian Virtues’, *Harvard Asia Quarterly* 2005, Available at <http://www.fas.harvard.edu>.

¹² Xiaorong li, “Asian Values and the universality of Human rights”, 16(2), *Philosophy and Public Policy Quarterly*, p. 19-20(1996)

poor and illiterate multitudes; such rights are not meaningful under destitute and unstable conditions. Economic development will be achieved more efficiently if the leaders are authorised to restrict individual's political and civil rights for the sake of political stability.

Claim 4: rights are a matter of national sovereignty. The right of a nation to self-determination includes a government's domestic jurisdiction over human rights. Human rights are internal affairs, not to be interfered with by foreign states or multinational agencies. In its 1991 White Paper, China states that "the issue of human rights fall by and large within the sovereignty of each state." In 1995, the Chinese government confirmed its opposition to "some countries" hegemonic acts of using a double standard for the human rights of other countries... and imposing their own pattern on others, or interfering in the internal affairs of other countries by using 'human rights' as a pretext." The West's attempt to apply universal standards of human rights to developing countries is disguised cultural imperialism and an attempt to obstruct their development.

Religious perspective of human rights

Different religions of the world practice different sets of morals and ethics and thus consider different sets of rights as human rights. As the religions of the world originated in various different places, times and circumstances, they place importance to human rights that is different from each other. In this paper we elucidate such difference between the west and Islam.

We often hear some commentators, especially outside the Islamic World, saying that the fundamental obstacle to any positive interaction between Islam and the West and their agreement on a set of common values consists in the fact that the Islamic values are at odds with Western ideals and values.¹³

Specific rules of Islamic law are hard to reconcile with international human rights. Secularists sharpen their teeth on them, and use them as evidence of the utter incompatibility of Islam and human rights. The most frequently encountered themes are women's rights, religious freedom and discrimination on the basis of religion. Secularists claim that the inequality engrained in Islam is too profound ever to be changed. According to several commentators, the issue of the

¹³ Sidi Omar & Fatuma Ahmed," Universal Protection of Human Rights: A Cross-Cultural Perspective", 2(1), *The Journal of Language, Technology & Entrepreneurship in Africa*, 311, (2010).

punishment of apostasy is the subject of a broad consensus among Muslim scholars. They justify it as a necessary rule for the protection of Islam. In the actual law of Islamic states today, the death penalty for apostasy is the rule in several countries. Other criminal or civil sanctions can be applied in even more jurisdictions. Any kind of sanction for apostasy explicitly contradicts article 18 UDHR, which specifies that the right to freedom of religion “includes freedom to change his religion or belief”.¹⁴ All those who are Indignant about the fate of Salman Rushdie, Taslima Nasrin, Nasr Abu-Zayd or others, simply refer to the international human rights of freedom of religion and freedom of expression, rejecting the idea that the Islamic context could add anything positive.¹⁵

Rhoda Howard’s five contemporary ideological challenges to universality of human rights

Typically, the scholarly debate over human rights is thought to take place between two opposing camps: the Universalists and the Cultural Relativists. The universalists build their understanding of human rights upon the liberal tradition whereby rights are accorded to the individual by virtue of being human. Cultural relativists, on the other hand, argue that values are grounded in specific communities and that the communal group, not the individual, is the basic social unit. In reality, however, the ideological spectrum is much more complex; realizing that complexity can help point us to where the challenges to international human rights actually lie.¹⁶

In *Human Rights and the Search for Community*, Rhoda Howard describes five contemporary ideological challenges to human rights.¹⁷ “Radical capitalism,” a view held by Western liberals, dismisses social and economic human rights as irrelevant and idealistic. To Howard, this view represents a “capitalist culture’s rejection of economic rights” and confinement of rights to property rights and “the civil and political rights needed to carry out one’s own affairs in peace.”¹⁸

The four other challenges to human rights that Howard identifies all overlap with what in the West is called “communitarianism.” “Traditionalism” is adherence to the notion that

¹⁴ Eva Brems, *Human Rights: universality and Diversity*, p.244 (Martinus Nijhoff Publishers, 2001)

¹⁵ *Supra* 13

¹⁶ Available at :https://www.carnegiecouncil.org/publications/articles_papers_reports/905.html:pf_printable

¹⁷ Rhoda Howard, *Human Rights and the Search for Community*, p.3, (Westview Press, 1995).

¹⁸ *ibid*

international human rights conflict with traditional rules for orderly social behavior, and that within the confines of the group, the society protects the human rights of its members. It is this challenge that is usually presented under the guise of a distinctively “Asian,” “African,” or “Arab” perspective of human rights. “Reactionary conservatism” holds that the “excesses of contemporary freedom,” such as women’s liberation, homosexual rights, and so forth—in other words “excessive individualism”—are antithetical to social order.¹⁹

Howard’s fourth category, “left collectivism,” is a reaction against the West. Left collectivism holds that national self-determination and relief from Western imperialism and multinational corporations are the most important human rights. Adherents in the West can be found among ethno-religious minorities. Howard’s final category is “status radicalism.” Like the politics of identity, status radicalism is the belief that since rights are systematically denied to certain groups, one’s group status and protection of that group’s rights are more important than the protection of their individual rights. Many feminists and black activists in the Western world put forth this argument, demonstrating the failure of these societies “to incorporate all social groups in North America’s heterogeneous environment.”²⁰

The above stated challenges to the concept of universality of human rights are not absolute in nature. The factors however used as an argument against the universal application of human rights, are applicable selectively and on particular segments of the world population. For instance the Asian Value perspective does not voice the human rights perspective of the whole of the Asia. It is particularly restricted to the East Asian countries which practice Confucianism. Meanwhile South Asian countries have resorted to a more tolerant attitude towards the human rights standard being set out by the international law.

Similarly the conflict of Islamic views and the human rights concept of the west is not prevalent in all Islamic countries as contrary to the popular view. Current reformist thinking in the Muslim world focuses on tolerance, civil society, minority rights, women’s rights, cultural identity, and social welfare. Women’s struggles for freedom in the Middle East have turned them into agents of modernization and globalization. Many reform-minded women in Iran take their lines from the transnational women’s rights movement.

¹⁹ *Supra* Note 17

²⁰ *Id.*, p. 212

We also have examples of countries from the west which are quite often accused of disregarding the sanctity of human rights for their own political and economic vested interests. The United States has remained in the constant focus of such accusations. This leads us to ponder over the Asian Value claim of human rights being a new form of western imperialism.

CONCLUSION

After the in-depth probing of the concept of universality of human rights and the challenges to the universality one can discover the complexities that the international law retain while dealing with human rights. Where the arguments against the universal application of human rights hold quite some weight they cannot be depended upon to completely refute the claims of the Universalists. No doubt the conflict between the two lobbies seems never ending but no one view can be acknowledged completely. They are and shall remain in the constant 'push and pull' dynamics until the world comes together to embrace their differences in a manner which is constructive to the concept of human rights.

However, in my opinion the major challenges to universality concept only pose a hovering threat. Virtually all states accept the authority of the Universal Declaration of Human Rights. For the purposes of international relations, human rights today mean, roughly, the rights in the Universal Declaration. Those rights have been further elaborated in a series of widely ratified treaties. As of May 8, 2006, the six core international human rights treaties (on civil and political rights, economic, social, and cultural rights, racial discrimination, women, torture, and children) had an average 166 parties, which represents a truly impressive 85% ratification rate.²¹

Asian values – like Western values, African values, and most other sets of values – can be, and have been, understood as incompatible with human rights. But they also can be and have been interpreted to support human rights, as they regularly are today in Japan, Taiwan, and South Korea. And political developments in a growing number of Asian countries suggest that ordinary people and even governments are increasingly viewing human rights as a contemporary political expression of their deepest ethical, cultural, and political values and aspirations.

It is time now that the world community accepts that no nation, no culture and no religion can flourish in isolation. They all have overlapping interests and needs and thus cannot continue

²¹ Available at: <http://www.ohchr.org/english/countries/ratification/index.htm>.

the stringent outlook on one's own perspective. There is no denying that the differences make it difficult to bring the different concepts of human rights within the same framework but with constant dialogue and rational attitude these differences can be bridged for the greater good of mankind.