



Long Article

Universal Concept of Human Rights: A Cultural Relativist Approach and Legal Pluralism vis-à-vis Gender-Based Discrimination

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Abstract: *Human rights over time have taken the shape of the common and set legal standard of rights through various international instruments and are internationally well known and accepted universally, thus establishing its universality. However, this universal concept of human rights is often challenged by various nations and authors with the approach of cultural relativism, reservation to treaties, and legal pluralism. Asian and African nations often call these human rights a western concept that has not taken into account the individuality of different cultures into it. Many scholars have taken the support of a culturist approach to human rights and imbibing cultural values in them. States are often seen making reservations to treaties on cultural and religious bases which has often led to violation of rights of a particular gender or group of people belonging to ethnic, social, and cultural minorities. Pluralistic world order and pluralistic laws in a country imbibing cultural values often promote inhumane practices like female mutilation and freedom of speech and expression. That is why authors and nations support a universal concept for all which has humanistic value, which cannot be taken away by any nations or institution's legal charters. To understand these world human rights challenges and claims, we first need to understand their components.*

Keywords: *Human Rights, Cultural Relativism, Legal Pluralism, Cultural Gender Discrimination.*

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1. Introduction

The idea of human rights as an entitlement of every human being, with an unqualified universal scope, is somewhat unattainable as variations in conceptions of justice are inevitable. While human rights are thought of as a product of the west and imbibing only western cultures in contrast to the other Asian and African values that makes it more difficult for its universal application. Due to these contentions, there have evolved different schools of thought particularly: ‘Unilateral Universalism’ and ‘Cultural Absolutism’. Proponents of Universal Human Rights such as Amartya Sen, Shashi Tharoor, and various other authors stress that human rights are derived from a “shared faith in humanity and cultural considerations become irrelevant”.¹

On the other side of the scale are supporters of ‘Cultural Relativism’ or ‘Cultural Absolutists’ such as Ibhawoh who describes human rights as a western concept and comprising rights of one particular western culture being imposed on all cultures in the form of neo-imperialism.² Another challenge to the universal concept of human rights is legal pluralism described by John Griffith as a “fact that within any given field, the law of various provenances may be operative”.³ The existence of pluralistic normative orders within a society poses vexing questions for political and legal decision-makers especially when such orders tend to make competing claims of authority over the conduct of individuals.⁴

To understand these challenges and assertions of universal human rights one needs to understand its components first. Human right is a new concept whose values have been realized after the world war. Since then, it has become one of the components to measure different countries and their relationship between individuals and society. The idea of human rights asserts the individual entitlement and corresponding obligations of society which are not given by anyone rather every individual is entitled to these rights as soon as they are born.

Human Rights form one of the most essential rights, which is inalienable to human beings. Believers in human rights have advocated the universal concept of human rights. Rights that are based on dignity, justice, and equality of all human beings everywhere irrespective of different countries and different cultures. However, there are different challenges to the universal concept of human rights with many factors like first of its

¹ Shashi Tharoor, ‘Are Human Rights Universal?’ (2000) XVI(4) World Policy Journal 56

² B. Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (State University of New York Press 2007) 112

³ Prof. Dr. P Ishwara Bhatt, *Constitutionalism and Constitutional Pluralism* (Lexis Nexis 2016) 111, 112

⁴ *Ibid*

enforcement and proper implementation. The main contention, which arises while understanding challenges faced by universal human rights, is cultural relativism, legal pluralism, reservation to treaties, etc. These challenges to the universal concept of human rights have in many ways raised concerns about what can be considered right or what should be the elements of human rights that should be considered essential and truly universal.

2. Universality Concept of Human Rights

2.1. Origin and Idea of Universalism

The value of human rights has been realized since the time of World War and it has occupied the minds of most efficient scholars towards the development of some common normative universal legal order. Legal scholars and their theories from the past centuries whether natural or positivist have been concerned for the protection of mankind by some defined institutions, organizations, or by establishing a universal legal order in a state. This concept gained tremendous importance after the destruction caused by World War I and II and after the end of World War II finally, the United Nation was formed as a defined institution to solve the problems and bring harmony, peace, and tranquility to the society. This common parlance of coming together to solve problems has ultimately given rise to the concept of “Universality” which means that there should exist such laws, which shall apply uniformly to all nations irrespective of nationality, cultural diversities, and nation’s strength.

Human Rights are also the product of this thought which was made for the protection of humans from different inhumane actions of nations. They are not individual rights whose existence is dependent or limited to any state jurisdiction thus it applies to all the nations uniformly. They are also termed ‘common rights’ because they are common to men and women both. After the establishment of the United Nations, a resolution was enforced called as Universal Declaration of Human Rights in 1948,⁵ which laid down a few basic rights that can be common to all human beings irrespective of sex, religion, country, race, etc. The Charter has also removed human rights from the jurisdiction of domestic courts and has established it as an international matter.

However, there has been a constant debate and challenges to the concept of “universality” of human rights. These challenges have come into existence due to cultural diversity and certain predetermined existing values

⁵ Universal Declaration of Human Rights 1948

in particular nations. Human rights give the idea of justice but it is not justice actually it simply asserts the rights enriched in the “United Nations Declaration of Human Rights”.

Before getting into the plethora of human rights and its challenges, let us first try to sympathize with the constituent part of human rights.

2.2. What are Human Rights?

Human rights claimant claims that there are certain justifiable freedoms or benefits that an individual can claim from his society. Human rights are often called “basic” or “natural” rights. By calling them basic or natural rights, it is considered that any national constitution or law should not abridge these rights, and these rights cannot be taken away from any individual by any law or court.⁶ Ronald Dworkin suggested that human rights ordinarily “trump” over other interests of the public.⁷ Human rights purport the existence of a certain political relationship between individuals and society. It creates a limitation on the power of the state for the protection of these rights of individuals and on the individual side, it creates a commitment towards other individuals in society.

2.3. Universality of Human Rights

Human rights have been closely tied with the concept of rights, which are “universal, indivisible and interdependent, and interrelated.”⁸ It also asserts that “the universal nature of these rights and freedoms is beyond question”.⁹ Some theorist has connected human rights with the concept that man is a rational being and universal rights, which is granted forms the basis of that as a rational being by nature, and if these rights are not granted a human being will be considered slaves and not free.¹⁰

The creation of the United Nations Declaration of Human Rights is considered one of the most progressive steps taken for the advancement of humanity in international history. However, due to its international character and binding norms it has attracted debate from many sides. Many critics believe that these international treaties have undermined the power of the state and hampered their sovereignty. Few question their origin and genesis in the western culture and thought and this cannot be applied universally¹¹, some argue

⁶ J.E.S Fawcett, *The Law of Nation* (Basic Books 1968) 151

⁷ Louis Henkin, ‘The Universality of the Concept of Human Rights’ (1989) 506 ANNALS 11

⁸ Vienna Convention on the Law of Treaties 1969

⁹ UN General Assembly, Vienna Declaration and Programme of Action (adopted 12 July 1993) A/CONF.157/23, art 1(1)

¹⁰ Nghia Van Hoang, ‘Transcendent Values of Universal Human’ (2015)18 Kor. U. L. Rev. 15, 17

¹¹ Michael Freeman, *Human Rights: An Interdisciplinary Approach* (1st ed. Cambridge: Polity Press 2002) 56, 57

human rights are unarguably universal.¹² Supporters of cultural relativism argue that human rights should be seen from a cultural perspective, thus there can be no universal human rights if there is no universal culture.¹³

2.4. Human Rights: Why Universal and its Proponents

Human rights are considered to be emanating from natural rights. The creation of human rights is definitely the outcome of a long struggle between peoples and states. However, the origin of these rights can be traced back to the time of Greek and Roman philosophers. Hobbes, Locke, and Rousseau always gave their theories for the protection of human rights by the State.

Hobbes considered these rights a very important aspect and connected these rights to universal concepts.¹⁴ However, it finds its true origin in the seventeenth century under the theories of natural rights given by John Locke who considered natural rights as inalienable and which cannot be abrogated by the State.¹⁵ Later on, Jean Jacques Rousseau gave the theory of general will which is seen as the instrument of participatory democracy and Kant divided these rights into three categories which were civil, international, and third which are enjoyed by every individual because he is considered as a part of the world.¹⁶ Thus eventually we can say natural law gave the evolution of natural rights.

However, this evolution concept from natural laws has been mostly criticized by the nineteenth and twentieth centuries theories, especially by the positivist, utilitarian and Marxist theories. Bentham called “human rights as simple nonsense: natural and imprescriptible, rhetorical and nonsense upon stilts”.¹⁷ In today’s times also one can see mass struggles happening for the realization of some important rights all over the world and for the removal of discriminating laws of various nations against humans like US Black Lives Matter¹⁸, The Me-too Movement¹⁹, etc. Marxists say that human rights are class perspective rights whereas universal concept attracts classless perspective.²⁰

¹² Jack Donnelly, *Universal Human Rights in Theory and Practice* (1st ed. Cornell University Press 1989)

¹³ Shashi (n 1)

¹⁴ Sarbani Guha Ghosal, ‘Human Rights: Concepts and Contestations’ (2010) LXXI(4) *The Indian Journal of Political Science* 1069, 1106

¹⁵ Bhatt (n 3)

¹⁶ UN General Assembly, Vienna Declaration and Programme of Action (adopted 12 July 1993) A/CONF.157/23, art 2(1)

¹⁷ Hernandez Truyol Be, *Human Rights, Globalization, and Culture: Centering Personhood in International Narrative in Moral Imperialism: A Critical Anthology* (New York University Press 2002) 353

¹⁸ Adina Campbell, ‘What is Black Lives Matter and what are the aims?’ (*BBC*, 13 June 2021)

¹⁹ Gurvinder Gill & Imran Rahman Jones, ‘Me Too founder Tarana Burke: Movement is not over’ (*BBC*, 9 July 2020)

²⁰ Lee Kawn Yew, ‘Culture Is Destiny: A Conversation with Lee Kuan Yew, Interview by Fareed Zakaria’ (1994) 73(2) *Council on Foreign Relations* 113

2.5. Human Rights as a Western Concept

Humans are not born equal, they vary in many ways from gender, and thoughts to their culture. When humans are born different, how can rights be the same? Thus, human rights are perceived differently in different cultures and one such conception that flows from there is that human rights are considered a western concept meaning it owes their origin to western countries. There are two approaches basically for this conception one is 'Universalistic' and the second is 'Cultural Absolutist'. Universalistic approaches say that even though human right is considered the origin of western concept but it has universal application because these rights are formed on the principle of equality, freedom, and justice irrespective of religions and countries whereas cultural absolutists say that human rights are not universal in true sense they only represent western values.²¹

Originally the idea of human rights originated as a solution to the expansion of capitalism and its values in Europe in the 17th and 18th centuries.²² These rights have emerged from the debate between natural and positivist approaches, liberal and Marxist approaches, and western and non-western approaches. It has been perceived that human rights are a western concept because key players who played a dominant role in the formation of the Declaration originally belonged to western societies, and they focused mainly on their notion of rights and did not respect other regional cultural rights. They took the view of liberal ideologies rather than Marxist or non-western.

Another conception of human rights as a western concept is that when the declaration was adopted in 1948 many of the third world countries or popularly called developing countries were under the colonial regime thus it is said that their contribution was "by no means negligible".²³

2.6. Instruments of Universality

Eleanor Roosevelt, guided by the Human Rights Commission drafted a document, which was adopted on 10 December 1948 unanimously by 56 countries that were members of the United Nations, and only 8 nations abstained from it. The Preamble of the Declaration stated, "recognition of inherent dignity and inviolable equality of all members in the human family is the foundation of freedom, justice, and peace in the world".²⁴

²¹ Antony J. Langlois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory* (1st ed. Cambridge University Press 2001)

²² Moira Rayner, *History of Human Rights-Up to WW2* (2005)

²³ Alison Dundes Rentel, *The Concept of Human Rights* (Quid Pro Books 1988) 9

²⁴ UN General Assembly, Universal Declaration of Human Rights (10 December 1948, 217 A-III)

Another crucial instrument that was adopted was the International Covenants on Civil and Political Rights²⁵ and Economic and Social Rights²⁶ were framed and adopted by the General Assembly in 1966 and finally enforced in 1976. Besides these covenants, many treaties like ICERD²⁷, and CEDAW²⁸ have been adopted by the United Nations.

3. Issues relating to Universality of Human Rights

There have been many challenges faced by the universalism of human rights. This concept has been restricted by the different conceptions of nationalism, cultural diversities, and legal pluralism. The future of human rights has been trapped between western and non-western concepts. With the formation of new states especially were colonized after independence came to realize and see human rights as a western concept formed of western values and it did not pay attention to the cultural values as existent in Africa and Asia.

Basically, they saw these international charters and instruments as another form of slavery of the western countries on the developing countries and as a hindrance to their growth, sovereignty, and culture. International law shows the idea, applications of which are flowing from the historical, legal, and political concepts of the west that are not so common and are not shared by non-western countries.²⁹ However, with the adoption of UDHR universal status was given to human rights but still, the practical enforcement differs from country to country. For example, in the US which is always considered the supreme protector of human rights, its repeated violations can be seen in Guantanamo Bay where it carries out its torture activities.³⁰ And how can one forget the mass movement of 2020 “The Black Lives Matter”³¹ which again highlighted the long back prevailing system of racial discrimination? Another example of the US can be that it has still not signed the Convention on the Rights of Children.

Government officials in China committed genocide and crimes against humanity against Uyghurs, a largely Muslim ethnic group, including imprisonment, torture, forced sterilization, and persecution of Uyghurs and

²⁵ UN General Assembly, International Covenant on Civil and Political Rights (16 December 1966 United Nations, Treaty Series, vol. 999, p. 171)

²⁶ UN General Assembly, International Covenant on Economic, Social and Cultural Rights (16 December 1966, United Nations, Treaty Series, vol. 993, p. 3)

²⁷ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965, United Nations, Treaty Series, vol. 660, p. 195I)

²⁸ UN General Assembly, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83)

²⁹ Christopher C. Joyner and John C. Dettling, ‘Bridging the Cultural Chasm: Cultural Relativism and the Future of International Law’ (1989) 20 California Western Int. Law Journal 1

³⁰ Nghia Van Hoang, ‘Transcendent Values of Universal Human Rights’ (2015) 18 Kor. U. L. Rev. 15

³¹ Adina (n 18)

other religious and ethnic minorities³². Europe also sees human rights differently from the Dignity Based Rights of Humanity and supports “dignitarian tradition” whereas the UK and US represent “Individualistic Tradition”.

4. Cultural Relativism

4.1. Meaning

Culture is like tar even though you want to leave it still sticks with you because the family and society that you are living in have influenced your ideologies. Cultural relativism is an approach to determining the validity of human rights as international law. Cultural relativists consider that culture is the sole source of validity of cultural and moral rights.³³ Cultural relativists believe that different countries can have different perceptions of human rights. One thing can be perceived as a human rights violation in one country and in another country it cannot be. The main argument is that cultural differences of different societies cannot be reconciled into a single notion of human rights because different cultural societies have different ideas that should be basic human rights according to their own culture.³⁴ Particularly this idea has flowed from the different third world nations like Asia and Africa which see community rights and not individual rights. These nations have placed more importance on economic, social, and cultural rights than civil and political rights.³⁵

The word “culture” has been defined by UNESCO as “the set of distinctive spiritual, material, intellectual, and emotional features of society or a social group, it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions, and beliefs”.³⁶ Cultural differences occur not only in the ideologies of nations but also in practice for example in some cultures women are considered pure when they go through the torture procedure of genital mutilation whereas in other cultures it can be seen as a blatant violation of human rights.

In some Asian countries, menstruating women are considered impure and can be treated differently during the period of menstruation whereas this conception cannot be seen in western societies. The main distinction lies between the conception of right or wrong, moral or ethical one cannot be the same as others. The answers

³² U.S. Department of State, 2020 Country Reports on Human Rights Practices (30 March 2021)

³³ Jack Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) 6(4) Human Rights Quarterly 400

³⁴ Tracy E. Huggins, ‘Anti-Essentialism, Relativism, and Human Rights’ (1996) 19 HARV. WOMEN’S L.J. 89, 92

³⁵ Josiah A. M. Cobbah, ‘African Values And The Human Rights Debate: An African Perspective’ (1987) 9 Human Rights Quarterly 309, 331

³⁶ Louis E. Wolcher, ‘Cultural Diversity and Universal Human Rights’ (2012) 43 Cambrian L. Rev. 44

to the moral or ethical questions depend upon the mindset of persons, what is thought by their culture as moral or ethical will be right for them. Examples can be seen in Somalia where for the people living there for them women circumcision is justified whereas this concept is totally indifferent in western societies. Relativists argue that their cultural practices have come to be recognized slowly with the pace of time in western societies also like the wearing of the veil by Muslim women in France.

However, many perceive cultural diversities as a blockade on the realization of their rights and freedom, which could have been accomplished by the universal concept of human rights. It is also believed many times that nations are using culture as a defense under whose veil they practice cruel traditional practices such as racial, gender, and religious discrimination that can be persistent in many nations such as India, Africa, Pakistan, Iran, China, USA, etc.

Europe has also seen a backlash in the protection of human rights in recent years with the growing fears of Antisemitism, Islamophobia, and Anti-gypsyism having reached alarming levels. The growth of political and societal acceptance of racism; the violation of rights of migrants and refugees; the threats to women's rights; their trafficking, the repression of dissent; and the erosion of judicial independence can also be seen³⁷.

Incidents of desecration of cemeteries, assaults on people wearing religious symbols, and attacks on places of worship have occurred in several European countries³⁸. Hate speech and crimes against Romans also remained widespread. Even though the measure is taken by Europe for growing fears of Islamophobia and Antisemitism, such things often violate the rights of the particular community if compared to others³⁹.

5. Reservations to Treaties

Cultural practices have often led to violations of human rights in society. Reservations to treaties are another mechanism that subdues the universality of human rights. Countries through reservations are defending their religious, cultural, and gender discrimination. Cultural practices have become like norms and anyone who tries to evade or break this normative order has to face consequences. Cultural has been used as a defense in many societies to carry their traditional practice, which often has led to gender-based discrimination among men and women, girls and boys. Religion has often been used to subjugate women.

³⁷ Council of Europe, *Annual Activity Report 2019* (Comm DH 2020 7)

³⁸ *Ibid*

³⁹ *Ibid*

One of the very important examples of it can be the system prevailing in Islamic countries where gender-based discrimination has been ratified under the Sharia Act.⁴⁰ For example under Shari'a women only have the right to marry one man and that should be Muslim moreover women are not given choice to even choose their life partner and marriage is a contract between parties.⁴¹ Such discrimination also existed in Asian Countries, for example, in India where men are considered as superior sex to women, which, can also be seen in the patriarchal society prevailing in India.

Under Hindu law discrimination against women can be seen as under the Hindu Succession Act where women were not given equal status in the proprietary rights until 2005. The present case of Sabarimala⁴² where women have not been given equal rights as men to pray to God and enter the temple due to menstruation can be an example of how cultural practices are impacting and promoting gender discrimination and such practices are protected by making reservations to the treaties. Many countries including India have also made reservations to CEDAW which often subdues the purpose of these treaties. Due to this mechanism, western countries and international institutions are not able to enforce nor condemn the inhumane violation of rights of gender or religious communities of a nation.

6. Legal Pluralism

6.1. Meaning

“Legal pluralism” has emerged as one of the most influential phenomena at the present time even though it is not a new thing, but it is concerned with studying the concept of state law and religion in a society or nation. The word connotes moving away from “legal centralism” which revolves around the exclusiveness of state law and exploring the new dimensions of non-state legal orders which have been made due to the socio-legal practice and developing a conception of law as a multiplicity of norms, localities, states, and practices existing in a multi-centered field.⁴³ “Legal Centralism” means there exists a uniform system of law, which is made by the State and administered and enforced by particular institutions of the State, and all other normative norms for different religious and cultural institutions that exist are considered subordinate to the State law.⁴⁴

⁴⁰ Wilebkel Walther, *Women in Islam* (Abner Schram Montclair 1981) 22, 23

⁴¹ Camillia Fawzi El-Solh & Judy Mabro, *Muslim Women's Choices: Religious Belief and Social Reality* (1st Edition, Routledge 1994) 57, 64

⁴² *Indian Young Lawyer Association & Ors v State of Kerala* [2018] SCC OnLine SC 1690

⁴³ Gad Barzilai, 'Beyond Relativism where is Political Power in Legal Pluralism?' (2008) 9(2) *Theoretical Inquiries in Law*, 396

⁴⁴ John Griffiths, 'What Is Legal Pluralism' (1986) 24 *J. Legal Pluralism & Unofficial L.* 1

The existence of this pluralistic legal pluralism has been an issue since the early times, but it has gained pace with the process of globalization where there are certain transnational actors like NGOs, law firms, international institutions, and social movements acting in a world towards mediation of law in the global world. Under the plural legal system, the State law has been combined with laws of indigenous people, as well as the conservation of free community status in some countries that inherited the recognized community's system prevailing under colonialist law, are additional examples of the coexistence of a state and non-state legal orders.⁴⁵

In the early times, pluralist legal scholars were interested in studying the hierarchical forms of the legal system, which existed as separate forms of the legal system one on top of another in the hierarchy. In the 1970s and 1980s, the picture was complicated by anthropological legal scholars who studied the systems of State and non-State legal orders existing side by side and not in a hierarchy of one another but their simultaneous existence may not be governed by authoritative institutions.⁴⁶ For example, in the 20th century, there was the simultaneous existence of local and European law among the people of tribes and villages in colonial society.⁴⁷ In India also in early times, there was administrative incorporation of personal laws of Hindu, Muslim, and Christian into British Colonial Law.⁴⁸ Some legal scholars draw inferences from political theory and argue the existence of law in smaller areas and cultural communities before the nation-state concept came into being or before state institutions were recognized.⁴⁹

The legal pluralism concept has arisen by recognizing that international or transnational law does not seem to be merging with national laws. However, centralists never claimed to restrict this plural concept of laws until and unless these laws conflict with the political social order established by the state or there is opposition to basic norms of human rights as a part of the law.⁵⁰

Examples of legal pluralism can be seen at present time in many nations including India, Israel, Canada, etc. In India, legal pluralism can be seen by the existence of different family laws like Hindu, Muslim law, Parsi, and Christian law which has been recognized by the state institutions and has been enacted as formal law but the administrative authorities of these religious laws are not given any formal recognition. Like Islamic Law

⁴⁵ Natan Lerner, 'Group Rights and Legal Pluralism' (2011) 25 Emory Int'l L. Rev. 829, 837

⁴⁶ Sally Engle Merry, 'International Law and Socio-legal Scholarship: Toward a Spatial Global Legal Pluralism' (2007) Stud. In'l. Pol. & Soc'y

⁴⁷ Bronislaw Malinowski, *Crime and Custom In savage Society* (1st Edition, Routledge 1926)

⁴⁸ Camillia (n 41)

⁴⁹ Christine Parker, 'The Pluralisation of Regulation' (2008) 9 Theoretical Inquiries in Law 349

⁵⁰ Natan Lerner, 'Group Rights and Legal Pluralism' (2011) 25 Emory Int'l L. Rev 829

has been cognized but its authority has not been centralized, yet there is an authoritative system in Arab and state centers in different nations⁵¹ and the state may interfere when these religious laws violate any basic human rights. An important example of this is the Triple Talaq Case⁵² where there was a constant violation of women's rights in Islamic laws even though it was recognized by the state but due to the violation of rights and miserable condition of women state authorities had to interfere.

However, legal scholars are giving more attention to the overlapping concept of legal and non-legal entities and giving less importance to the pluralism literature. Even though the literature on the plural legal system could help the nations and international institutions to find answers and ways to harmonize the clash of normative communities in the modern world.⁵³ According to John Griffiths "legal centralism is a myth and legal pluralism is a fact."⁵⁴ Legal pluralists have remarked the existence of state law and other normative laws mutually coexist and complement each other moreover the study of these plural laws gives the understanding of how this non-state law and institutions can impact the international or trans-national system of laws⁵⁵ and finally helps in diluting the conflict of universal and relativism.

6.2. Legal Pluralism and Globalization

Globalization has a great impact on the legal framework. Legal Pluralism has often been the result of colonial migration and missionary movements. More often nowadays legal pluralism can be seen in industrial and commercial offshoots where local communities establish their own law.⁵⁶ The process of globalization and the State's engagement in the process of development has led to the establishment of different legal orders in a state itself. Many non-state actors such as NGOs, International Organizations, and other commercial corporations are impacting the state legal order. States in the process of globalization engage with different actors, which in turn limit the power of the state by putting their own conditions of operation.⁵⁷ For example, to take help or funds from the International Monetary Fund a state has to comply with different norms and conditions put by institutions like IMF put conditions to state before lending to open their market for free trade.

⁵¹ Keebet von Benda-Beckmann, 'Globalization and Legal Pluralism' (2002) 4 Int'l L.F.D. 19, 24

⁵² *Shayara Bano v Union of India and Ors* [2017] 9 SCC 1 (SC)

⁵³ Paul Schiff Berman, 'Global Legal Pluralism' (2007) 80 South California Law Review 1155

⁵⁴ John (n 44)

⁵⁵ Camillia (n 41)

⁵⁶ Von (n 51)

⁵⁷ Julian G. Ku and John Yoo, 'Globalization and Sovereignty' (2013) 31 Berkeley J. Int'l L. 210

Nowadays these international organizations themselves establish their own legal order which the State has to comply with which limits state laws and in turn these institutions establish a parallel legal order to that of the United Nations and European Union. European Union law is considered superior to state laws in European countries such as Germany and France. The United Nations can interfere with the state and take action against the State if a state is disrupting the peace. A recent trend, which is setting up its own legal norms and orders, is Treaties and other covenants. For example, Paris Agreement on climate change put limitations on the countries to reduce their carbon emissions.

These non-state actors not only put limitations on the power of government but also, they engage with the people and communities and try to control them like Environmental NGOs put administrative control on the activities of local people.⁵⁸ Thus we can say globalization can play a huge role in influencing and establishing a parallel legal order in today's world. Not only does it impact the State, but it also controls the activities of different local communities which in turn impacts the cultural practices also.

7. Asian Values and Cultural Relativism

With progress in time, we have seen vast improvement toward the universal system of human rights. We are in dire need of more accountability and responsibility for everyone. But this does not go with Asian societies. Society has a claim that they promote an exceptional set of values, and this claim comes with a critical look at western ideas and culture. The idea behind this concept is that Asia is made of a multicultural system and the Eurocentric approach has ignored the divergence of Asian traditions among themselves.⁵⁹ Asians may have some features common in changing national, religious, and ideological differences, although there are no quintessential values, which fit all parts of this immensely large society.⁶⁰ According to the Asian System, there is more importance given to collective rights than individual rights, and rights are considered just a matter of national sovereignty, which has been supported by the relativist theory of cultural relativism.

Irrespective of what is being claimed by the Asian values, reality cannot be ignored that Asian values which are mostly influenced by religious sentiments are promoting human rights violations and disturbance of social order example plight of Harijans or lower caste people in India who are still considered as untouchables or

⁵⁸ Von (n 51)

⁵⁹ Amartya Sen, *Human Rights and Asian Values* (1st Edition, The New Republic 1997)

⁶⁰ Tesi di Laurea, 'Human Rights and Cultural Relativism' (2015) LUISS Guido Carli 88

other cultural norms in the south of which considers menstruating women as impure and being forced to sleep outside the house.

Asian values influenced by culture have also promoted minority discrimination and where people have been classified into a hierarchical order of their caste. A living example of this is the Hindu Caste system, which has promoted the division of people from the early times. Thus, it is said that it has done more harm than good in society. Take for example Israel versus Palestine where thousands of Muslims have died due to the claims of Jerusalem as the holy land of both countries. Because of these gross violations of human rights and loss of humanity, there has been a constant struggle and demand to establish a universal system of human rights, which grants basic rights to humans, and which can be applied uniformly by every nation irrespective of culture.

8. Countries Tackling the Challenges of Human Rights

India, unlike other Asian countries, has enacted a very comprehensive set of legislations, which prefers human rights to cultural relativism. The Constitution itself provides a plethora of rights to the citizens as well as the people. Talking about the preamble of the Constitution goes on to say that the Constitution will provide equality in different spheres of life and also talks about the liberty of individuals. Article 14⁶¹ of the Constitution emphasizes “equality before the law and equal protection of the law”, Article 15⁶² provides certain rights for the equal treatment of all people which helps in matching up their standards with those who are socially and economically better as compared to them.

Moreover, Article 17⁶³ of the constitution abolishes untouchability whereas Article 21⁶⁴ guarantees procedural and substantive fairness, which make it the most prominent human right in the constitution. There are other rights too that also safeguard the interest of the minority class like the Protection of Civil Rights Act⁶⁵, SC and ST Act⁶⁶. The Constitution also allows people to access court in terms of violation of their Fundamental Rights under which various basic human rights have been adopted.

⁶¹ The Constitution of India 1950, art. 14

⁶² The Constitution of India 1950, art. 15

⁶³ The Constitution of India 1950, art. 17

⁶⁴ The Constitution of India 1950, art. 21

⁶⁵ The Protection of Civil Rights Act 1955

⁶⁶ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989

Apart from the Indian Constitution, the Judiciary has also played a very important role by giving a plethora of judgments which have in turn gradually established some particular human rights which are not guaranteed in the Constitution but by the way of interpretation of the existing legal provision. For example, the right to privacy⁶⁷ has been recognized as a fundamental right by the judiciary in recent years. Women have been given the right to worship equally irrespective of gender under the Sabarimala Case⁶⁸. Judiciary in the past has also protected the rights of women and deprived communities in Shah Bano Begum's case⁶⁹ Muslim women were given equal rights at par with women of all religions without any barrier by their religious laws.

Similarly, the US has also taken various recent steps for the enhancement of the protection of human rights for every person and ending racial discrimination, and providing equality, equity to all in the wake of awakening the "Black Lives Matter Movement". US has laid down various policies through executive orders⁷⁰ and different acts like HR40, a bill proposed in Congress for the establishment of a commission to inquire about slavery legacy, and for creating a reparation proposal.⁷¹

Similarly, European countries and the European Union have also taken steps the protection of the universal concept of human rights of which it is a true believer. European Union has in the past formed many Treaties⁷² and Conventions which affirm the universality of human rights. Recently also for the more protection and promotion of these rights, it has launched a Fund of 1.5 billion euros for promoting fundamental freedoms, the rule of law, democracy, and the work of human rights and civil societies organizations and human rights defenders all over the world.⁷³ Further, a Gender Action Plan⁷⁴ has been laid for the protection of women and their upliftment and to remove various disparities in gender pay, workplace norms, etc.

Some suggestions to tackle these challenges of human rights are, firstly, nations should make two drafts of different categories of human rights which can be applicable to all without any religious barriers like the right to get an education. Right to health and dignity etc. are such rights that people need irrespective of the cultural

⁶⁷ *Justice K.S. Puttaswamy and Anr v Union of India and Ors* [2019] 1 SCC 1

⁶⁸ *Indian Young Lawyer Association & Ors v State of Kerala* [2018] SCC OnLine SC 1690

⁶⁹ *Md. Ahmed Khan v Shah Bano Begum* [1985] 3 S.C.R. 844.

⁷⁰ White House Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Order No. 13950, 2020)

⁷¹ Human Rights Watch Report (2021)

⁷² European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

⁷³ European Commission, Strengthening Human Rights and Democracy in the World (EU, 9 December 2021)

<https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6695> accessed 10 April 2022

⁷⁴ European Commission, Gender Action Plan (GAP) III – An Ambitious Agenda For Gender Equality And Women's Empowerment In EU External Action (SWD, 25 November 2020) <https://ec.europa.eu/international-partnerships/system/files/join-2020-17-final_en.pdf> accessed 10 April 2022

bondage second categorization can be made in a specific context given to a particular community to apply, but it should not impose unreasonable custom and gender discrimination.

The plausible point is to establish a relation between the rights and needs of human beings; some needs are universal and with them, no compromise can be made. The main point is that every human being wants certain basic freedom to exercise his own free will and every human has rights of dignity in society, and no one should be denied this by reasons of cultural relativism. Where there is a violation of basic human rights in a country where mass social movements can be seen like in Islamic countries in which women are not considered equal which has given rise to feminist movements in Islamic countries where women are fighting for basic human rights same is the situation of Muslims Women in India. A present example of this can be Me-too Movement led by women in many countries raising a voice against sexual harassment of women. The Black Lives Matter Movement in the US is a blazing example of people's demand for human rights.

9. Conclusion

In the end, by reading the challenges faced by human rights in different nations due to these factors one can easily point out that there exists some permanent understanding of basic human rights that all the world is accepting and protecting. But certainly, human rights violations have been occurring under the mask of these challenges. Nations cite these challenges as their country's culture and religious ethos which cannot be removed but then also positive steps are being taken to bring uniformity and reasonableness to these issues. It is not desirable to be against the culture of one person or community but trampling on the rights of humans which are the basic rights to survive in the name of cultural relativism is also not desirable. The point of concurrence is everyone wants freedom and liberty but curtailing it just on the basis of old culture and traditions does not sound plausible in the present era.

Furthermore, it can clearly be seen how overall, these challenges of reservations, cultural relativism, and legal pluralism seem to make sense. However, under careful scrutiny, it does not make for a sound argument. While different countries have the right to demand their rights in various ways, there are fundamental doctrines that should be made universal. Dress, Language, food, and other minor beliefs and traditions can vary, and cultures should be allowed the freedom to practice them, However, practices such as slavery, sexism, female genital mutilation, and infanticide, among other human rights violations must be held up to universal standards.

Therefore, In the end, the author can conclude that there exist some common features in all the cultures throughout all the nations, which can be compiled into one universal system granting basic human rights.

Such rights are the right to dignity, right to life, right not to torture, right to freedom, liberty, etc. Countries need to adopt a balancing approach to solve the problems and tackle the challenges efficiently without their cultural, religious, and pluralistic differences.