

Can Human Rights be Universal?

Rishya Dharmani*

Abstract

The human rights discourse lies at the heart of legitimacy and accountability of any political organisation. As a powerful idea, it has come to be associated as an integral part of leading a worthwhile life. It is the product of the abstract natural rights theory originating in seventeenth century western Europe calling for the birth of homo politicus or the political man. Two centuries between The Declaration of the Rights of Man and of The Citizen (1789) and the Universal Declaration of Human Rights (1948) reflect the debates that were to come later. Prime among them is the nature of human rights itself.

Keywords: Human rights, natural law, Asian and African rights, universalism vs relativism

INTRODUCTION

Historical Evolution of Human Rights Discourse

The crumbling feudal edifice since the thirteenth century had given rise to an array of social changes in European society. Christian theorists like Thomas Aquinas had already mentioned God's command as the divine law on earth. However, a series of socio-economic changes witnessed since the Magna Carta (1215) led to a shift from natural law as duties (evident in Athenian and Christian paradigm) to natural law as rights perspective.

There was an ever-increasing belief that human beings were endowed with certain inalienable properties which constitute a part of their selfhood. The Scientific Revolution spearheaded by Newton and Galileo invited the ire of the Catholic Church. The independence and autonomy of human reason was heralded by Immanuel Kant famously as the "Age of Enlightenment".

From a Hobbesian natural law perspective culminating into a Leviathan to the Lockean idea of a representative government, natural rights discourse underwent a mammoth change. The French call for liberty, equality and fraternity was the culmination of two centuries of struggle between autocracy and basic rights of men. However, the nineteenth and the beginning of twentieth century saw not only the rejection of the natural rights paradigm but ignoble abuses of humanity. Bentham wrote "*rights is the child of law; from real law come real rights; but from imaginary laws, from 'law of nature', come imaginary rights (...) Natural rights is simple nonsense; natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts*" [1].

*Author for Correspondence

Rishya Dharmani

E-mail: rishya.dharmani@gmail.com

Student, School of Social Sciences, Indira Gandhi National Open University, New Delhi, India

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Even for Ludwig Wittgenstein the only law was the "command of sovereign". The utilitarian's and the romanticists had pronounced the death knell on individual rights. The brutalities of the world wars were the end of this scepticism. The Nuremberg War Crimes Trials (1945-49) held convict 'crimes against humanity' necessitated a legal and philosophical engagement with fundamental human rights. "(The UDHR) is a proven force for good—both weapon and symbol for those seeking to give strength to the weak, courage to the

fainthearted, power to the powerless, and voice to the silent. The very existence of a universal declaration rebukes long-standing, but intellectually feeble presumptions, that a sovereign state's treatment of its citizens is the business of that state and that state alone [2]."

Content of the Post War Human Rights Discourse

Weston has mentioned five features of the nature of human rights in international law:

- They represent individual and group demands on distribution of resources, knowledge and other fundamental human values that engender mutual tolerance and forbearance. This implies claims against denial of the realisation of standards.
- Human rights reflect a wide variety of claims from "most justiciable to most aspirational" [3]. They are reflective of human morality and legal principles.
- It is universal and general in nature; possessed by all human beings by the virtue of its self-definition.
- Most expressions of such rights are limited by securing similar aspirations of others or "aggregate common interest". Thus, they cannot be absolute in nature.
- They are fundamental to dignified human existence.

During the cold war, the narrative linking democracy and capitalism with respect of human rights was furthered from many sources- the philosophy of Ayn Rand being an example. The neoliberalism and "complex interdependence" between modern states on political and economic matters as elucidated by Keohane and Nye had a powerful impact on normative foundations of state systems. The 'American dream' was sold by portraying an El Dorado of human development and freedom. However, this bubble soon burst.

With the appraisal of eurocentrism since the late 1970s encapsulated by dependency theory and postmodern paradigms, human rights faced the scrutiny of critics. The major debate was on the proposed relevancy of these formulations for newly decolonised countries and also multiculturally rich advanced industrial societies. The 'humanitarian intervention' or R2P engineered the Operation Desert Storm and Gulf War. Human rights lie at the centre of political discourses from American hegemony, international law, nature of global capitalism to domestic questions of justice and equality. This does not prevent it from being a source of revisionist ire.

CRITIQUE OF 'HUMAN RIGHTS'

Are there 'Human Rights' in Non-western Societies?

Jack Donnelly quotes Abul A'la Mawdudi as "Islam has laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances (...) fundamental rights for every man by virtue of his status as a human being" [4]. However, such rights are granted by God and are divine injunctions. Similarly, Abul Fazal has also mentioned the rights of the *riya'ya*, fulfilling which is a duty of the emperor. And yet as "three quarters of all world states have endorsed the (...UDHR) with a ratification rate of 88% and it has also been argued that a progressive interpretation of Sharia law can be compatible with universal human rights [5]." In traditional African societies, "human rights was an essential part of African humanism" [6]. Being a part of different historical tradition, they did not originate from abstract philosophical enquiries but ingrained in the communal life.

Chung-Shu Lo mentions an absence of Chinese word for rights but refuses to draw the conclusion of lack of such a discourse. He claims that classical texts enjoin the rulers to have a heavenly duty to protect the people. In ancient Indian political thought, it was the *rajadharma* or the rulers' highest religion to provide for their subjects. The law giver Manu has recorded the ancient myth of regicide or revolution against a tyrant king in event of his forfeiture from his duties.

This conceptualisation of rights from the duty perspective is incongruent to the specific western historical experience of objective individualist rights. Jack Donnelly characterises this wide chasm as reflective of “our approach to human dignity” [7]. For some even the Hindu caste system of India is expressive of a “traditional, multidimensional view of human rights” [8]. Jack Donnelly refuses to entertain any perspective other than the “vision of equal and inalienable individual human rights [9].” He reflects the incompatibility of claims like “Asian values” with this discourse. He refuses any culture centric justification or rejection of human rights but a comprehensive doctrine that calls for values such as justice and equality.

Rhoda Howard-Hassman has defined the relativist argument as “cultural absolutism” [10]. In fact, the proponents of universalism often raise the post structuralist argument of contingency, non-consensual and deeply political terrain of culture. In 1961, the Organisation of African Unity (OAU) convened in Nairobi to give to itself the African Charter on Human and Peoples’ Rights. In contrast to the Eurocentric approach of adversarial jurisprudence institutionalised in the ICC, the African Commission on Human Rights called for conciliation and friendly settlement. In contrast to the Inter-American and European rights convention, it mentioned rights of groups, aged, infirm under the rights of existence, equality, and non-domination. It also heeded to the “third” generation solidarity rights.

The Post Structuralist Argument against “Imperial Humanitarianism”

Critical theorists have problematised the discourse on “freedom”, “democracy” and “human rights” especially when US foreign policy with its “coalition of the willing” used these terms as a bogey for its brutal national interests-something which converted a region in the world to a hotbed of conflicts. The “free world’s” neo civilising mission wreaked havoc on millions of people during and after the cold war.

On a conceptual level, Donnelly’s response is a call for “overlapping consensus universality”- a form of locally normative practices within the global ideological human rights discourse. He points to the independence of human rights discourse as having a normative *a priori* without active support from powerful states. Indeed, transnational NGOs and bureaucracy the formulations of Keohane and Nye have furthered neoliberalism independent of states’ sovereign backing. “This international legal universality” has generated a consensus on the desirability of rights and has created a proto international civil society in this regard. Sinha sums this approach succinctly in his critique

The present international approach to human rights is based upon a conception of social order wherein the fundamental unit of society is the individual, the primary basis for securing human existence in society is through creating rights, and the primary method of securing these rights is through legalism, these tenets are axiological subsumptions of Western societies which do not prevail in all societies of the world [11].

He calls it “single-catalog” approach which refers to the existence of specific social and economic conditions, which Donnelly fails to appreciate, which forged a civilisational unity within the Europeans during the colonial adventures and philosophical rethinking during Enlightenment. Elsewhere, Georg Hans Gadamer refers to the “fundamental prejudice” of modernity which is “prejudice against prejudice itself.” Human rights are a product of such a combination of individualism and paramountcy of abstract reason which rejects all others ontology except itself. Thus, one has to be careful of neo-McCarthyism in human rights discourse and question the parlance of ‘individualism, rightism and legalism’. It is clear that globalism that has deeply influenced our politics and economies has also produced a wide-ranging consensus about the necessity of securing human freedoms [12].

Basis of ‘Relative Universality’ of Human Rights

The ontology of rejecting the neo colonial project of west can be as, Sinha suggests, to divorce human rights from the question of emancipation and judge the latter independently. If the optimists of

Enlightenment like Kant believe in the inevitable adoption of reason, for to forsake it is equivalent to “trample upon the sacred rights of man”. Indeed, individual and public salvation is inextricably linked “it is more nearly possible, however, for the public to enlighten itself; indeed, if it is only given freedom, enlightenment is almost inevitable [13].” Can anyone fault the eurocentrism in the Human Development Index without making the dangerous argument of denying liberty to citizens? Rawls’ contractarian philosophy provided a sound reasoning for basic equality in a domestic setting, however, in the international scene it is between states. The non-existence of this hypothetical international contract is dimmed by the functional “contracting out” of such jurisprudence to the European Court of Human Rights or the ICC.

For Rawls human rights serve three purposes- they are a parameter to its legitimacy, they determine limits to sovereignty and limit pluralism amongst people. Human Rights for Donnelly have an “ontological universality” [14] which have made them valid from a Rawlsian perspective. The latter believes that a decent society can respect such rights for it is guided by ‘common good conception of justice’. Contrary to Rawls, Habermas grounds these rights in human autonomy. When we perform communicative action, we link our private and public use of reason. In this rational entailment, he posits the growth of human rights as opposed to modern bureaucratic rationality. Instead of conceiving rights in an individualist parlance, one should grant it intersubjectivity.

As a departure from the rationality argument, Finnis provides a neo natural rights justification for human rights. In *Natural Law and Natural Rights* (1980), he draws from Aquinas’ argument of *jus* or fairness and justice. He identifies six cross cultural practices that can serve as the basis of natural and universal rights. The good that all cultures values, according to him are

- a. Life (including self-preservation and procreation);
- b. Knowledge (considered valuable in itself);
- c. Play (activities enjoyed for their own sake, lacking any point beyond their own performance);
- d. Aesthetic experience (appreciation of beauty);
- e. Sociability (including friendship, which is a non-instrumental relationship);
- f. Practical reasonableness;
- g. Religion (even if one rejects religious claims, to ask questions about the origin and purpose of life is essential to a ‘full life’) [15]

Carrying this further, Shkar and Rorty find a set of activities that humans universally abhor. They claim the cruel treatment, torture is against all human standards. In *Contingency, Irony and Solidarity* (1989), Rorty develops the concept of ‘contingency’ which “means opposition to any idea of human essence, or nature, or any other ideas that supposedly provide the ‘foundations’ for law, morality and politics [16].” Irony refers to the acceptance of multiplicity of world views and recognising this very limit to one’s ideas creates solidarity. He rejects abstract and universalist standpoints but refers to emotional identification with fellow human beings. He exemplifies this by the case studies of Jews who were saved by Belgians and Danes not because of their ‘common humanity’ but identification in more parochial terms of being a member of the same Union or belonging to the same region. This sceptical and negative basis for human rights, it is argued, skirts eurocentrism.

CONCLUSION

The universalism-relativism debate is a complete Cartesian circle. “UDHR synthesizes the Anglo-American understanding of the individual and the modern “dignitaries” rights tradition of continental Europe and Latin America. It does not choose either of these visions. The Anglo-American vision reflects the ideas of Western thinkers (e.g., Thomas Hobbes, John Locke, and John Stuart Mill) that the individual is alone, isolated, and in competition with his fellows. Europe and Latin America’s vision refers to a public realm where individual and community are bound together in reciprocity [17].” Nietzsche had claimed that all efforts of anti-modernity become complicit in furthering the modern project, critiques of human rights inadvertently justify brutal regimes of truth. Human rights

discourse now acts as a safeguard against the grotesque and disturbing avatars of late capitalist “culture industry”. It also becomes the tool for intervention by imperialist ventures. However, its utility cannot be denied as it remains the only way to reclaim humanity in this rationally savage world.

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9. See Donnelly, 1986. Universal Human Rights in Theory and Practice.
10. Howard: 315
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13. Kant
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16. Hoffman and Graham: 418
17. Le: 205-206