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## ARE UNIVERSAL HUMAN RIGHTS TRULY UNIVERSAL: THE CHALLENGE OF CULTURAL RELATIVISM

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### ABSTRACT

The relationship between the universality of human rights and the concept of cultural relativism has been a tensed one. This research paper examines whether the two can coexist or if their principles are fundamentally at odds. While human rights are commonly defined as inalienable rights inherent to all individuals by virtue of being human, the claim of their universality is often challenged on the grounds of cultural diversity and differing moral frameworks across various societies. The core question explored is whether universal human rights can truly apply to all cultures, or whether they should be adapted to accommodate cultural specificities. This study brings about how cultural relativism influences the interpretation and implementation of human rights, particularly in regions with deep-rooted traditions and non-Western value systems. It seeks to showcase how differing cultural norms can reshape the scope of rights and influence the perception of what is considered morally or legally acceptable. The paper also addresses the philosophical tension between asserting rights as universal and recognising that their practical application is shaped by local contexts. An important focus is placed on the drafting of the Universal Declaration of Human Rights (UDHR), and the reasons as to why cultural rights were largely excluded. Cultural rights were seen by some as potentially threatening to state unity or as secondary in importance to civil and political rights, especially in developing or transitioning societies. The analysis suggests that while human rights should retain their core universality to uphold human dignity globally, cultural rights may be best handled at the national level to reflect the specific needs and identities of diverse communities.

**Keywords:** Universality, Human Rights, Cultural Relativism, Cultural Rights, Morality, Human Dignity, UDHR.

## INTRODUCTION

The very concept of ‘human rights’ has gone through a lot of development in a more or less rough manner. Human rights are inalienable rights. It was only in the 20<sup>th</sup> century that human rights were being incorporated into international documents. The United Nations defines human rights as “*rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.*”<sup>1</sup> The modern era of human rights constitute of provisions of religious doctrines along with philosophical, legal, and political teachings which were professed. However, a problem that one may face while stating human rights as universal is that it cannot be considered “universally universal” – it does not cater to everyone. It had been formulated by the Western nations; hence, it took into consideration their lives during its formulation process. Immanuel Wallerstein had commented that “*The struggles between European universalism and universal universalism is the central ideological battle of the modern world, and its outcome depends on how the future world will be structured...[the] equality of all points of view is nothing more than an implicit form of giving up to the forces of European universalism and the power of the current state of affairs, which seek to preserve their unequal and undemocratic world system. If we want to create a real alternative to the existing world-system, we must be able to find a way to think about and implement universal universalism – the kind of universalism that can be reached but which will not inevitably appear by itself.*”<sup>2</sup>

The first document for human rights was the Universal Declaration of Human Rights (UDHR) adopted on 10<sup>th</sup> December, 1948, but it was without a special vote, wherein 8 States abstained. Researchers have argued that the declaration was passed as a result of confrontation and compromise between different cultural, moral and political traditions.

## LITERATURE REVIEW

*Are Human Rights Universal?*<sup>3</sup> – by Shashi Tharoor

In this article, Tharoor writes on who defined human rights, and if they can be considered a Western concept. He questions why the socio-cultural aspects of Third World countries are not

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<sup>1</sup> UNITED NATIONS, <https://www.un.org/en/global-issues/human-rights>

<sup>2</sup> David Palumbo-Liu, et al, *Immanuel Wallerstein and the Problem of the World: System, Scale, Culture*, DUP, (2011), <https://www.jstor.org/stable/j.ctv1210259>

<sup>3</sup> Shashi Tharoor, *Are Human Rights Universal?*, 16 WPJ 1, (1999), <https://www.jstor.org/stable/40209657>

recognised. He states that when taken from a philosophical point of view, nothing can be universal if rights can be defined by cultural perceptions. Tharoor writes that “*if there is no universal culture, there can be no universal human rights.*” Philosophers have said that human rights are rather anthropocentric. He says that the provisions of the UDHR showcase the “ethnocentric bias” which prevailed during the drafting of the Declaration. Universality of the rights do not indicate uniformity. He fittingly mentions that human rights are derived from the mere fact of being human, and they are not a gift from a particular government or a legal code. The “indigenization” of human rights and its implementation serve as a challenge. Tharoor concludes by remarking that the universal idea of human rights, paradoxically, assists in making the world safe enough for diversity.

### ***Universal Human Rights versus Cultural Relativity*<sup>4</sup> – by Carole Nagengast & Terence Turner**

The authors of this article introduce the article by providing a background on how human rights came into existence, which was the Nazi Holocaust. They also write about the correlation of human rights with globalization and Westernization. They mention that violations committed by families and communities have not been addressed in the international human rights. Countries which happen to violate human rights of their citizens often use cultural relativity as a shield, and defend that social control lies in their tradition. These social controls would include female infanticide, violence against women, lack of education, etc. Many argue that human rights do not take into account the domestic view on rights, local culture and history, and centrally, the customary communitarian practice. Scholars advocate that culture has come to being because of certain historical circumstances, but in that manner, there can be no such ideas as “human universals.” The authors put forth an entirely anthropological perspective on how culture and human rights are contradictory and also comment on other anthropologists and scholars works on the same.

### ***Cultural Relativism & Universal Human Rights*<sup>5</sup> – by Jack Donnelly**

In this article, Donnelly writes about cultural relativity being an undeniable fact due the

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<sup>4</sup> Carole Nagengast & Terence Turner, *Introduction: Universal Human Rights versus Cultural Relativity*, 53 JAR 269, (1997), <https://www.jstor.org/stable/3630954>

<sup>5</sup> Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HRQ 400, (1984), <https://www.jstor.org/stable/762182>

variability in culture and history in all parts of the world. He says that this variability supports communal autonomy, and can exempt itself from criticisms from outsiders. He also wrote that if human rights are the rights that everyone has for being human, there should be no argument that they are, by definition, universal. He provides insights on the nature of the relationship between cultural relativism and universal human rights, the tension between the two and a comparison between relativism and universalism. By defining cultural relativism, Donnelly gives an analysis on radical cultural relativism and radical universalism. The deep-rooted tension between relativity and universality can be understood and it is also mentioned in this paper. There in internal as well as external judgements as to how cultural practices are. The internal judgement examines whether the cultural practice is within the basic framework of the society, and the external judgement finds out if the practice should be accepted or not. Donnelly mentions the cultural confusion that persists in Third World countries due to Westernization. Colonised lands often consider human rights as “Western human rights” because of the acts of the colonisers. Human rights are individualistic and belong to individuals, but cultural rights are often given to families or communities as a whole.

***Monitoring Cultural Human Rights: The Claims of Culture on Human Rights and the Response of Cultural Rights<sup>6</sup> - by Elsa Stamatopoulou***

The paper, through the perspective of international law, gives an analysis on the developments in the field of cultural and human rights. The author writes that cultural rights had made the system of human rights burst at the seams. She writes on why the UDHR had neglected cultural rights. It explores how the United Nations Human Rights Commission (UNHRC) had monitored the related issues. She provides a historical perspective on the drafting history of Article 27 UDHR and how the perception of cultural rights has changed from 1945 to the current times. From a historical perspective, the text initially “*provided for the right of persons belonging to ethnic, linguistic, or religious minorities to establish and maintain schools and cultural and religious institutions and to use their own language in the press, in public assembly, and before the courts and other state authorities.*” However, this text had not been adopted. Protecting the regional language was essential for protecting culture, but it was still omitted. She concludes by remarking that NGOs and governments need to be more familiar with the new developments and the potential of the UN monitoring bodies. The author hopes

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<sup>6</sup> Elsa Stamatopoulou, *Monitoring Cultural Human Rights: The Claims of Culture on Human Rights and the Response of Cultural Rights*, 34 HRQ 1170, (2012), <https://www.jstor.org/stable/23352241>

that even in respect to cultural rights, there must be remedies for injustices. She says that to ground human rights in culture would mean to listen to local communities and its people, and bring these international rights to the local. She suggests that the best method of doing this is by fostering popular participation and protecting cultural rights.

***Are Universal Human Rights Universal?*<sup>7</sup> - by Ildus Yarulin & Evgeny Pozdnyakov**

The authors write on the problem of “universal” human rights being that although they are meant to be recognized internationally and are enshrined in international instruments, they lose their universal quality due to the impact of socio-cultural customs and other factors. Due to this, they acquire a rather relative status. They provide the definition of human rights as given by many philosophers and notable figures. The controversy behind the universality of human rights is analysed and explained in depth. Ideally, human rights apply, essentially, because humans are the same everywhere. However, many countries did argue that some cultural relativity would still arise, since different communities have different cultures, and this would affect how they view rights. The statements of many renowned people such as Jack Donnelly, Catherine McNeil, Constantanides, Christina Cerna, etc. are given to provide background on how human rights may or may not be universal, and its basic nature. The authors have drawn a detailed analysis on human rights in China as China is said to be the country with the least compliance to human rights. This would be attributed to the thousands of years of Confucianism – the doctrine does not constitute any such thing as “human rights” at all. Since Confucianism is entirely based on harmony, one must notice that it is harmony which is ‘social’ rather than that which is ‘individual.’ They conclude by stating that the example of China demonstrates that human rights and culture clash so much so that the “consent to universal human rights is questioned.” They suggest that human rights should be an internal matter of each country as it being universal would lead to conflict with the culture of the country in question.

***Cultural Relativism: Relevance to Universal and Regional Human Rights Monitoring*<sup>8</sup> - by Shveta Dhaliwal**

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<sup>7</sup> Ildus Yarulin & Evgeny Pozdnyakov, *Are Universal Human Rights Universal?*, 71 KAP 67, (2021), <https://www.jstor.org/stable/10.2307/27107221>

<sup>8</sup> Shveta Dhaliwal, *Cultural Relativism: Relevance to Universal and Regional Human Rights Monitoring*, 72 IJPS 635, (2011), <https://www.jstor.org/stable/41858839>

Dhaliwal writes on how the concept of human rights is universal, however, not its implementation. She explores on the matter that when the United Nations adopted the UDHR, at almost the same time, the US adopted the Declaration on the Rights and Duties of Man. Europe, in 1950, made a treaty based on human rights for their region. Such mechanisms were also adopted in African and Arabian countries in 1981 and 2008 respectively. This goes ahead to show that cultural relativism is very much prevalent. The author talks about how and why the UDHR came into existence, and also includes theories of cultural relativism as provided by multiple critics. She adds on the convergence of culturalism and universalism. The author says that it is not 'regionalism versus universalism,' rather it is 'regionalism within universalism.' The author writes that the UN supported the emergence of regional human rights. But this would, again, defy the very purpose of 'universal' human rights. The author quoted the Vienna Declaration of 1993 which said that universal human rights and cultural relativism are inter-related.

## **CULTURAL RELATIVISM & CULTURAL RIGHTS**

Cultural relativism is the perception that the ethical and social standards reflect and showcase the cultural context from which these standards are derived. In international relations, cultural relativism is said to determine if an action is "right" or "wrong" by analysing it with the ethical standards of the society in which it had occurred.<sup>9</sup> During the drafting of the Universal Declaration of Human Rights (UDHR), the central debate was if the Declaration must give recognition to group and minority rights in relation to Article 27, which deals with cultural rights. Cultural relativists had argued that the cultural rights and duties mentioned in the UDHR are provided to individuals, and not groups.

## **THEORIES OF CULTURAL RELATIVISM & HUMAN RIGHTS**

Tom Hadden had propagated the 'Pendulum Theory' of rights<sup>10</sup> - he mentions that universal human rights are adopted by different cultures in different manners. Ken Booth had discussed the 'Tyranny of Presentism'<sup>11</sup> where three tyrannies which arise during the implementation of human rights and provided. Booth has given that culture is a tyranny since each culture has its own ideologies and rationality, which would in turn, give different scopes to human rights in a

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<sup>9</sup> *Supra* note 5

<sup>10</sup> Tom Hadden, *The Pendulum Theory of Individual, Communal and Minority Rights*, 77, (2007)

<sup>11</sup> Ken Booth, *Three Tyrannies*, CUP 31, (1999)

manner that it would fit into that particular society. Giving a generalized view of specific cultures would eventually give false views of the world. However, there are many criticisms to this idea as it does not take into consideration the philosophical background of such rights.<sup>12</sup>

Upendra Baxi, in 'Three Moments', had explained how culture affects human rights. Under 'Abstract Universality', there is a presumption that everyone is an equal beneficiary to the rights. Secondly, 'Abstract Particularity' deals with the basic classification of the bearers which does not invoke separate measures when taken from a universal stand. 'Concrete Universality' is at the top of the pyramid wherein all human beings are considered equal and deserving.

Jack Donnelly provides insight on conceptual and substantive universality. He had written that conceptual universality is, in simple words, just another way of saying that human rights are equal to all and alienable.<sup>13</sup> Dormel Geoho had written that although culture does have its part in human rights, they appear in different forms and hence, they tend to be universal in a functional aspect.<sup>14</sup>

## WHY DID THE UDHR NEGLECT CULTURAL RIGHTS?

These are some of the plausible reasons as to why cultural rights were not taken into consideration in the Universal Declaration of Human Rights, as given by Elsa Stamatopoulou:<sup>15</sup>

- (i) The human rights avoided the discussion on cultural relativity since adding on cultural relativity to human rights would essentially undermine the very concept of its universality.
- (ii) Cultural rights are clearly related to culture, which is always changing and evolving.
- (iii) Cultural rights, for certain governments, would provide for "group identities" and "group rights" which would have a chance of threatening the integrity of the state.

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<sup>12</sup> *Supra* note 8

<sup>13</sup> Jack Donnelly, *The Relative Universality of Human Rights*, 29 HRQ 281, (2007), <https://www.jstor.org/stable/20072800>

<sup>14</sup> *Supra* note 8

<sup>15</sup> *Supra* note 6

- (iv) Cultural rights could even be considered as a “luxury” for some societies at certain developmental stage.

### **JACK DONNELLY ON UNIVERSALITY & RELATIVITY**

Donnelly had written that radical universalism, which would also include human rights, is actually subject to the moral community. It would have a rigid hierarchical order of several moral communities. For basic human rights to be completely universal, the radical universalist must give absolute priority to the demands put forth by cosmopolitan moral community over the so-called “lower” moral communities. He says that radical universalism cannot be maintained justifiably as it would require respect from outsider communities too for the purpose of implementation. But due to the intolerance around the world, it is a difficult task.<sup>16</sup>

Donnelly argues that for formulating any list of rights, be it for the UDHR or the International Human Rights Covenants, there must be a provision allowed for outsiders to have allowance for “*special practices of national and other non-cosmopolitan moral communities.*” However, there may be chances of logical contradictions which was given in an excellent question by Donnelly – “*if human rights are based in human nature, on the simple fact that one is human being, and if human nature is universal, then how can human rights be relative in any fundamental way?*” He even gives an answer stating that it is simply because nature is, in a way, culturally relative.<sup>17</sup>

He also says that if all rights are to be determined by social and cultural rules, then there would be no human rights at all. Cultural relativism would lead one to think that there is no “moral significance” to human beings, rather everyone would only be viewed by their moral status.

### **UNIVERSALITY OF HUMAN RIGHTS**

Rights and freedoms can exist only if there is a common morality. As argued by many writers, human rights are given merely for being human. There can be no point in universal human rights if the very concept of human rights is different in different States. Cultural relativism would mean that the universal nature of human rights is denied. Delegation from China and Iran were brought up during the discussion of human rights issues in the United Nations’ World

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<sup>16</sup> *Supra* note 5

<sup>17</sup> *Supra* note 5



Conference on Human Rights in 1993. They stated that the human rights models adopted by each country is different and cannot be assumed to be the same and implemented everywhere. Due to this, the very essence of its universality is skewed and lost. Hence, human rights are universal since it applies to all humans and must be treated that way. States can have cultural rights based on the population and they need not be implemented internationally. Universal human rights are a given set of rights which are curated to suit all the people collectively. They must not be mixed with culture as universal human rights exist for being human.

## **CONCLUSION**

The evolution of human rights has been a complex journey marked by significant developments, particularly in the 20<sup>th</sup> century with the emergence of international documents such as the Universal Declaration of Human Rights (UDHR). Human rights are regarded as inherent to all individuals, transcending factors such as race, nationality, and religion. However, the notion of universality faces challenges, with critics arguing that it is biased towards Western perspectives. Wallerstein highlights the ideology battle between European universalism and a truly universal perspective, emphasizing the need for a more inclusive framework that accommodates diverse viewpoints. The UDHR, despite being a milestone, faced opposition and abstentions during its adoption, reflecting tensions arising from cultural differences. Cultural relativism, the ideas that ethical standards are context-dependent, complicates the universal application of human rights. During the drafting of the UDHR, debates ensued over whether to recognize group and minority rights, with cultural relativists asserting that cultural rights pertain to individuals rather than groups. This tension evidently shows the challenge of reconciling diverse cultural norms with universal principles. However, that would, as mentioned before, destroy the very essence of its universality.

Despite these challenges, proponents argue for the universality of human rights, emphasizing their inherent nature and applicability to all individuals regardless of cultural differences. While recognizing the importance of cultural diversity, they advocate for distinction between universal human rights and cultural rights, which may vary across States. In conclusion, the journey towards universal human rights has been fraught with debates and challenges, particularly regarding cultural relativism and the inclusion of cultural rights. While acknowledging the complexities, the pursuit of universal human rights holds essential for promoting dignity and equality worldwide.