

UNIVERSAL DECLARATION OF HUMAN RIGHTS; THE CONTROVERSIES ON ITS UNIVERSALITY

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ABSTRACT

The Universal Declaration of Human Rights (UDHR) is a widely recognized international document containing many civil, political, socio-economic and cultural rights that were brought before humanity after the atrocities conducted during the Second World War. It, for the first time, embodied all these rights into a single document and tried to universalize the concept of human rights worldwide irrespective of sex, religion, place of birth, creed and color. It was no doubt an outstanding contribution in the regime of human rights by the then-world leaders. But controversies arise on the universality and universal application of all the rights incorporated under the document as there are cultural diversities around the world. There are high criticism that in the camouflage of the Declaration, the West intended to impose their political ideology upon the people of the rest part of the world. Some of the provisions of the Declaration being in direct conflict with Islamic and Chinese culture, the criticism has got some grounds. In my paperwork, I have however tried to bring out a critical clarification on the question of universality of the Declaration and the ways by which it can be turned into more multi-culture oriented.

Keywords: Human Rights, UDHR, Declaration, Universality, Western, United Nations, Diversity.

INTRODUCTION

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General

Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations. For the first time, it sets out fundamental human rights to be universally protected. It is the first comprehensive human right instrument to be declared by a universal international organization. The UDHR is widely recognized as having inspired and paved the way for the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels. It has turned into customary international law for its multi-dimensional and right-based approach. It for the first time laid down the legal and conceptual foundation of contemporary human rights worldwide. The Member States of the United Nations pledged to work together to promote the thirty Articles of human rights that, for the first time in history, had been assembled and codified into a single document. In consequence, many of these rights, in various forms, are today part of the constitutional laws of democratic nations.ⁱ But question arises whether all the rights incorporated under the instrument are truly universal or it is practically possible to declare all human rights as universal ignoring the geographical and cultural differences among the peoples across the world. Some critics argue that the Declaration itself is a tool to strengthen the European and Western cultural aggression and the Western concept of democracy.

HISTORICAL BACKGROUND OF UDHR

The Universal Declaration of Human Rights, which was adopted by the UN General Assembly on 10 December 1948, was the result of the experience of the Second World War.ⁱⁱ The unprecedented violation of human rights and unspeakable atrocity inflicted on humanity during Hitler's era led the world's leaders to rethink about formal recognition of human rights. "Besides the atrocities of World War II, with its intensive and unbelievable repression and brutality, provide the immediate background for the drafting and adoption of the UDHR."ⁱⁱⁱ

A commission known as the United Nations Commission on Human Rights was established with the goal of creating a document on human rights. The Commission on Human Rights had 18 members, each of whom represented a different political, cultural, and religious viewpoint. The draft of the declaration that would ultimately become the Universal Declaration of Human Rights was reviewed at the General Assembly's inaugural meeting in 1946. After reviewing it, the Assembly sent the Declaration on Fundamental Human Rights and Freedoms draft to the

Economic and Social Council "for reference to the Commission on Human Rights for consideration in the preparation of an international bill of rights." During its initial meeting in early 1947, the Commission authorized its members to produce what it referred to as "a preliminary draft International Bill of Human Rights." Later, a formal drafting committee composed of members of the Commission from eight States who were chosen with proper consideration for regional distribution took over the job. Women's rights were incorporated in the Declaration thanks in large part to the efforts of female delegates from several nations.^{iv}

The Commission had the world's attention by 1948. Eleanor Roosevelt, the widow of President Franklin D. Roosevelt and the United States representative to the UN, served as the meeting's energetic chair. To create the draft of the Universal Declaration of Human Rights, the Commission set out.^v

NATURE OF THE RIGHTS CONTAINED IN THE DECLARATION

According to American human rights expert Jack Donnelly, the Declaration has a Preamble and 30 paragraphs that combine 34 international human rights principles. The Universal Declaration of Human Rights, however, only made passing mention of several rights that would subsequently be acknowledged as being civil and political or economic, social, and cultural, such as the right to life, liberty, and security.^{vi} It outlines the following rights: the right to equality without discrimination; the right to life; the right to freedom and security; the right to protect against slavery; the right to recognition of personality before the law; the right to equal protection before the law; the right to access to legal remedies; the right to protect against arbitrary arrest and detention; the right to receive an independent, fair, and open trial; the right to the presumption of innocence; the right to the protection of privacy, family members, and abode; Right to freedom of movement and residence; Right to seek asylum; Right to belong to a nationality; Right to marriage and the establishment of a family; Right to own property; Right to freedom of thought, conscience, and religion; Right to freedom of expression; Right to free assembly and association; Right to political participation; Right to social security; Right to working in good health; Right to free trade; Right to rest and recreation; Right to adequate nutrition, clothing, and shelter; Right to health and social services; Special Protection for Children; Right to Education; Right to Cultural Participation; Realization of Social and International Order; Right to Self-Determination; Right to Humane Treatment; Right to Protect

Minority Culture; etc.^{vii} The most significant feature of the Declaration is that it has embodied both civil and political rights and economic, social and cultural rights in a single document. Here most of the rights are of civil and political nature and a few of them are Economic, Social and Cultural rights. These rights are based on the principles of dignity, equality and liberty, and are underpinned by notions of solidarity. Thus the Declaration includes among its thirty articles not only all the traditional individual liberties, like freedom of speech, fair trial and so on, but also the newer economic and social rights, like the right to work and social security^{viii} and What is true for the treatment of provisions of the UDHR dealing with civil and political rights is, by and large, true for the treatment of articles concerned with economic, social and cultural rights.^{ix} However, most of the rights incorporated under the document are universal, indivisible and inherent in nature.

THE CHALLENGES ON UNIVERSALITY OF UDHR

Though the Universality of UDHR is claimed in the Declaration itself as has been laid down in its preamble which proclaims the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations^x, there is still adequate debate on its universality especially on some rights. Since the concept of human rights is a product of historical development, it is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Human rights obligations vary depending on historical periods. Human rights are seen and applied differently in many nations depending on their level of development or historical, cultural, and historical traditions. Therefore, assuming that a certain country's human rights model and standard are the only ones that other countries should adhere to and demanding that they do so are wrong. It is neither reasonable nor possible to condition international economic cooperation or even help on them.^{xi}

Most of the rights incorporated here are civil and political nature. Economic, social and cultural rights albeit incorporated have been ignored here. Samuel Zan Akolog, an activist from the global South, opined following on an interview given on March 2005;

“I think the Western extreme emphasis on individualism in a sense consciously or unconsciously acts as a limitation to human rights. Sometimes I have wondered whether that is the reason why civil and political rights have tended to get more focus, more emphasis than

economic, social and cultural rights. Because the other body of rights, economic, social and cultural rights, is more about society, is more about recognition of people as a community, whereas in my opinion civil and political rights tend to emphasize individual rights."^{xii}

Besides focusing only on individual rights, group rights like right to clean environment, right protecting minority interests have not been given a place in the Declaration. The practice of arranged weddings, which is central to many global value systems, particularly Muslim culture, runs opposed to Article 16 of the Declaration, which guarantees free choice of a spouse. In addition, marriage is frequently the process that forges a kinship relationship. Due to the fact that a marriage will have an impact on every member of both kin groups (families, lineages, or clans), the parents or powerful elders of the kin groups will likely have some influence over whether the marriage will take place or not. Contrarily, in Western states, the bride and the groom alone have the legal right to get married. Assuming that couples have reached their majority, are mentally competent, are not within the incestuous circle of kin and are not carriers of a contagious disease, etc. no one has a right to interfere with their decision to marry.^{xiii}

Despite the fact that international law does not support any particular form of government, Article 16 of the Declaration aims to universalize a certain type of government chosen via democratic elections in the West. Not everyone agrees with its need of individual ownership of private property as outlined in Article 17. The definition of harsh, inhuman, and humiliating treatment varies across Islamic and secular cultures. The "rights" centered approach of the Declaration is not universal as many religious ideologies, and some civil law systems emphasize "duties" instead of "rights" or at least do not conceptualize individual as "bearer" of rights. There is high criticism that the Universal Declaration of Human Rights and various United Nations human rights conventions are based on Western culture and promote excessive individualism.^{xiv}

The international human rights system and its documents are repeatedly considered as Western and the UDHR has been reproached for reflecting exclusively Western values.^{xv} The Declaration was actually an expression of a Western view of how life should be lived, and of what rights there are.^{xvi} Another obstacle is that States must continue to uphold the idea of the indivisibility and interconnectedness of all human rights and see civil and political rights as equally important as economic, social, and cultural rights.^{xvii}

Group rights like right to clean environment, rights of ethnic group, rights of sexual minorities like lesbian, gay, bisexual, transgender, and transsexual (LGBT) people etc. have been ignored here. The persistence of such exclusions poses a challenge to the normative universality of human rights and reflects the unfulfilled promised of the human rights revolution.^{xviii}

It is true, as stated in the UNESCO Universal Declaration on Cultural Diversity, that culture takes on a variety of forms throughout time and place. Symbols of this diversity include the uniqueness and variety of the identities of the numerous groups and cultures that make up humanity. Like biodiversity does for nature, cultural variety acts as a center for interaction, inventiveness, and innovation. This makes it a part of the collective legacy of mankind, which should be affirmed for the benefit of both the present and the future.^{xix} That is why, the cultural relativist critique argues that because values vary with cultural context, and because human rights as presently conceptualized developed mainly in a western context, they are not universal^{xx} rather they are based on Western culture.

IS UDHR BINDING UPON THE STATES

Since States are not obliged to ratify treaties, it is understandable that the States which are parties to the treaty concerned are inclined to rely vis-a-vis other States on the argument that the norms incorporated in the treaty constitute a codification of universal norms of customary law or generally recognized principles of law.^{xxi} On the contrary, it is to be noted that when a state ratifies a treaty, it becomes a duty to comply with the extent of the provisions to which it ratifies. Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law.^{xxii} However, there is a great controversy in regard to the legal significance of the Declaration. On the one hand, there are those writers who subscribe to the view that the Declaration is not a legally binding instrument. On the other hand, there are some writers who have expressed the view that the Declaration might not have been binding when it was adopted in 1948 but it has now become binding or assured implications. Besides these two views, there are a number of authors who have expressed the view that although the Declaration is not legally binding yet it he a great moral and political force behind it and serves as a general guide, code of conductor yardstick from which the actions of men and women and nations are judged so far as respect for and observance of human rights are concerned.^{xxiii} It

has been argued and very forcibly that, since the Universal Declaration of Human Rights took the form of a resolution of the General Assembly, it can have no binding legal force. In its own words, it is merely a proclamation of "a common standard of achievement." Besides, it has been equally forcibly argued that the Declaration is an authentic interpretation by the General Assembly and through it by the Members of the United Nations, of the Charter provisions relating to human rights, that it confirms the principle that human rights are now a matter of international concern, and that it is even a basis for recommendation and action by the United Nations. It is also argued that the Declaration enunciates "general principles of law recognized by civilized nations" as contemplated by Article 38 of the Statute of the International Court of Justice and is therefore a source of international law. And finally, it has been argued that whatever obligations it may impose on governments it is certainly binding on the various organs of the United Nations as such.^{xxiv}

The rights outlined in the Declaration, in my opinion, have already been included in general treaties, and because of the number and distribution of ratifications, these treaties have established such a broad foundation that the rights outlined therein may be regarded as internationally recognized human rights. However, the legal implications of the Universal Declaration and the United Nations Charter, not the additional implications of the relevant treaties, shall define the content and breadth of the responsibility to respect these rights for the States that have not ratified the aforementioned agreements.^{xxv} The General Assembly therefore declares this UDHR as a common benchmark for achievement for all peoples and all nations, with the intention that every person and every organ of society strive to uphold these rights and freedoms through teaching and education as well as through progressive national and international measures to ensure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.^{xxvi} It has inspired the constitutions of many states, and although its promise of universal rights protection remains unfulfilled in many parts of the world, it has become, in the words of former UN Secretary General Ban Ki-moon, "a yardstick by which we measure respect for what we know, or should know, as right and wrong."^{xxvii}

The ideas of universal human nature, absolute human dignity and irreducible autonomy of the individual are basically Western assumptions. Consequently, the alleged "universality" of human rights needs to be addressed and compared to the cultural pluralism in the world.^{xxviii} The solution for the tense relationship between universality and cultural relativism should be

searched for in the independence and impartiality of those who supervise the implementation of the universal norms by the States.^{xxx} It is becoming clearer that human rights need to be reconceptualized to be able to reflect a set of values effectively shared by different cultures. In other words, evidence is growing that human rights need to be reconceptualized as being multicultural because the acknowledgment that “we live in a ‘pluriuniverse’ and not in a single universe” is also more and more clear.^{xxx} All human rights should not be declared as universal in terms of their application but to be declared as culture specific and a minimum standard is to be set to prevent deviation from those particular rights.

Group rights like right to clean environment, rights of ethnic group, sexual minorities etc. have been ignored here. Provisions containing these rights should have been incorporated here.

Over emphasis on political and civil rights under the Declaration ignoring the importance of economic, social and cultural rights is another criticism of the Declaration which has been reflected in 1966 when two separate covenants on human rights were adopted. Incorporation of both economic, social, cultural and civil, political rights under a single document giving equal emphasis is a crying need for all human beings, especially for the people of the developing countries.

The principles of non-discrimination and, both formal and substantive, equality should be seen as the cornerstone of the international, regional and national systems for the protection and promotion of human rights.^{xxx} The consolidation of human rights needs not only to recognize the other as similar but also to recognize it on its differences, accommodating such differences in the very human rights ethics.^{xxxii}

CONCLUSION

The Universal Declaration of Human Rights is one of the founding documents on human rights that tried to universalize the concept of human rights worldwide and more or less it has been able to do that to a greater extent. Nevertheless, not all kinds of human rights are by themselves universal for the very reason of their distinctiveness as there are cultural diversities worldwide and it is sometimes practically impracticable to apply all human rights equally to all regardless of sex, religion, cultural life, tribes, creed and color. From that point of view, the UDHR has failed to take these differences into account. Despite that it cannot be denied that it was the light lit at the end of the tunnel that gave hope to humanity at the time of remaking the world after the second world war where the world witnessed unprecedented atrocities. In the 1979

volume *Human Rights –Thirty Years after the Universal Declaration* the then director of the UN human rights division, Theo van Boven, reaffirmed the importance of the Declaration, arguing that it had served as a human rights yardstick in the petition mechanism for consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.^{xxxiii} The importance of the Declaration lies here.

ENDNOTES

ⁱ 'A Brief History of the Declaration of Human Rights'

<<https://www.humanrights.com/course/lesson/background-of-human-rights/a-brief-history-of-human-rights.html>> accessed 27 March 2023.

ⁱⁱ United Nations, 'History of the Declaration' (*United Nations*) <<https://www.un.org/en/about-us/udhr/history-of-the-declaration>> accessed 27 March 2023.

ⁱⁱⁱ Pinghua Sun, 'Specific Content and Legal Status of the UDHR' in Pinghua Sun (ed), *Historic Achievement of a Common Standard: Pengchun Chang and the Universal Declaration of Human Rights* (Springer 2018) <https://doi.org/10.1007/978-981-10-8370-9_9> accessed 27 March 2023.

^{iv} Nations (n 2).

^v 'A Brief History of the Declaration of Human Rights'

<<https://www.humanrights.com/course/lesson/background-of-human-rights/a-brief-history-of-human-rights.html>> accessed 27 March 2023.

^{vi} Lawrenz Fares, 'India: A Model for the Enforcement of Economic, Social, and Cultural Rights' (2019) 37 *Journal of Law and Commerce*.

^{vii} Sun (n 3).

^{viii} John P Humphrey, 'The Universal Declaration of Human Rights' (1949) 4 *International Journal: Canada's Journal of Global Policy Analysis* 351.

^{ix} Markus G Schmidt, 'The Universal Declaration of Human Rights: A Commentary. Edited by Asbjørn Eide, Gudmundur Alfredsson, Göran Melander, et al. Oslo: Scandinavian University Press, 1992. Pp. Iii, 474. \$59.' (1994) 88 *American Journal of International Law* 557.

^x For details, see 'Universal Declaration of Human Rights' (1977) 8 *Bulletin of Peace Proposals* 276.

^{xi} Pieter Van Dijk, 'A Common Standard of Achievement. About Universal Validity and Uniform Interpretation of International Human Rights Norms' (1995) 13 *Netherlands Quarterly of Human Rights* 105.

^{xii} Eva Kalny, 'Against Superciliousness: Revisiting the Debate 60 Years after the Adoption of the Universal Declaration of Human Rights' (2009) 29 *Critique of Anthropology* 371.

^{xiii} Paul J Magnarella, 'Universalism versus Exceptionalism: Human Rights and the Asian Values Critique' (2004) 4 *The Oriental Anthropologist: A Bi-annual International Journal of the Science of Man* 60.

^{xiv} *ibid.*

^{xv} Kalny (n 12).

^{xvi} 'Editorial: The "Universal" Declaration of Human Rights' (2017) 92 *Philosophy* 331.

^{xvii} 'The Universal Declaration of Human Rights at 60' (2008) 26 *Netherlands Quarterly of Human Rights* 481, 60.

^{xviii} Bonny Ibhawoh, 'Human Rights for Some: Universal Human Rights, Sexual Minorities, and the Exclusionary Impulse' (2014) 69 *International Journal* 612.

^{xix} Koïchiro Matsuura, 'Appendix I UNESCO Universal Declaration on Cultural Diversity UNESCO Universal Declaration on Cultural Diversity' (2005) 52 *Diogenes* 141.

^{xx} Magnarella (n 13).

^{xxi} Van Dijk (n 11).

^{xxii} United Nations, 'The Foundation of International Human Rights Law' (*United Nations*)

<<https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>> accessed 21 July 2023.

^{xxiii} Dr. SK Kapoor, *International Law and Human Rights* (19th edn, Central Law Agency 2014).

^{xxiv} Humphrey (n 8).

^{xxv} Van Dijk (n 11).

^{xxvi} Emma Stone Mackinnon, 'Declaration as Disavowal: The Politics of Race and Empire in the Universal Declaration of Human Rights' (2019) 47 *Political Theory* 57.

^{xxvii} Ibhawoh (n 18).

^{xxviii} Alice Duarte, 'Human Rights: What Possibilities of Universalization?' (2019) 43 *Humanity & Society* 403.

^{xxix} Van Dijk (n 11).

^{xxx} Duarte (n 28).

^{xxxi} 'The Universal Declaration of Human Rights at 60' (n 17) 60.

^{xxxii} Duarte (n 28).

^{xxxiii} Jochen von Bernstorff, 'The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law' (2008) 19 *European Journal of International Law* 903.

