

Universalism Vs. Cultural Relativism: Gender Inequality and Violence Against Women in Context

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Abstract

The entire society of scholars of international law discourse is more or less divided between two analytical approaches for strengthening human rights laws and eliminating the barrier towards promoting human rights. The first school of thought is universalism, which advocates and proponents that all human beings are born with equal status and, simply because they are human, inherently possess the same human rights. Contrary to the former, scholars of cultural relativism believe that human rights are not absolute and may depend upon the practice of a particular society, as there are rights that are not absolute for all human beings. Contrasting the legal friction of these two separate parlances, this paper is a triumph to examine what is the status of “Gender Equality” with a special reference to women, between the two sects of international law scholars along with a brief account of the introduction of universalism and cultural relativism. The Article discusses, therefore, how to bridge the gap between these two schools of thoughts by accepting certain principles from a neutral point of view with a special focus on women's potential to organize and work within their cultures and not go beyond the limit of their culture to achieve greater human rights.

1. Introduction

In this age of globalization, human rights issue has become more serious than ever. Especially after the second world war, huge importance was drawn to the human rights sector, and the Universal Declaration of Human Rights (UDHR) of 1948 cemented a foundation for all international, regional, or national human rights instruments. It was approved by the United Nations General Assembly more than 70 years ago, in 1948. The main proposition of this instrument highlights the universal application of human rights and establishes a common standard for achieving these rights for everyone and every country. As stated in the Vienna

Declaration and Program of Action, it aims to build a global society that respects the full standards of human rights without distinguishing between a person's race, sex, language, or religion.¹ Also, the Convention on the Elimination of Discrimination against Women (CEDAW) was adopted in 1979 by the UN, a convention specifically designed to protect women in the last decades. Since then, the conflict between the two different views of the application of human rights at national levels, universalism, and cultural relativism, has been a key matter for the UN.

Advocates of cultural relativism propose that from the primitive ages, the history of human civilization shows that people inherently create cultures for their own sake and eventually develop them into a legal system.² Conversely, the universalists believe and promote that humans possess the same inherent human rights irrespective of their cultural and social identity.³

This ideological gap between the scholars of the two discourses vitiated the possibility of creating a uniform model of protecting human rights. Thus, this conflict has left a special mark on women's rights, where universalists claim that cultural relativists use 'culture' to justify the continued domination over women. On the other hand, cultural relativists see the idea of universalism as a Western culture-like human rights model that wants to dominate all over the world with their theory.⁴

This article briefly explains the two discourses reiterated and links them to gender equality. Not strictly focusing on any of the ideas, this paper approaches finding the gap and tries to make a bridge between the two discourses.

2. Conceptualization of Theoretical Approach

Universalism and cultural relativism had conflicted for decades, like a bipolar systematic, since their origin when the UDHR was announced in 1948. The following paragraphs will give these two schools of thought a look into the conceptualization for a better understanding of the paper:

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

² Elene G. Mountis, 'Cultural Relativity and Universalism: Reevaluating Gender Rights in a Multicultural Context' Penn State International Law Review, (Vol:15, 1996) 113, available at <<http://elibrary.law.psu.edu/psilr/vol15/iss1/3>> accessed 27 February 2023

³ Ibid

⁴ Jack Donnelly, *International Human Rights* (1993) 35

2.1. Universalism

The most popular opinion on the universalist approach to Human rights can be built on the perspectives of Western countries, not just in the common law, equity, and justice in appreciation, but also in the moral authority and capacity of a human being. The origin of the concept of universalism can be traced back to 1948 when the UDHR was adopted by the UN, where the word "universalism" was novelly referred to. It suggests that the basic principles and values underlying the concept of human rights are universal in nature. Thus, the concepts of individual freedom and belief in a democratic system and political rights, and recognition of social and economic rights are based on the same principles and values, and everyone is supposed to look similar through the goggles of universalism irrespective of any other factor simply because he or she is a human being.⁵ Everyone is independent irrespective of the place, wherever he or she comes from, what he or she does, where he or she lives, and the national background or community she or he belongs to.⁶ Universalists force governments to establish a system that ensures their citizens have access to the law and equal protection of human rights.⁷ It can be said that universalism is, to a greater extent, one of the most important ideas for governing human rights in modern days, and it will therefore not be wrong to say that human rights are civil rights that must be followed by universal rules and values set by the standard.

2.2. Cultural Relativism

The concept of cultural relativism is far from the idea of universalism, providing that human values vary widely from different cultural perspectives. It represents ideas on the link between morality, culture, humanity, and other factors.⁸ Besides the concept of universalism, cultural relativism is also widely referred to as the basic tool for interpreting human rights from a global perspective, and the two typically differ from each other in the contrast of ethics, morality, and customs of every society. Cultural relativists believe that the rights of the people vary, and

⁵ Jack Donnelly, 'Cultural Relativism and Universal Human Rights' *Human Rights Quarterly* (1984), 420

⁶ Dr. Peter Kirchschräger, *Universality of Human Rights* (Proceedings of the XXIII World Congress of Philosophy 15:49-63)

⁷ Elisabeth Reinhart, 'Human Rights: An examination of universalism and cultural relativism.' *Journal of Comparative Social Welfare*, Vol. 22, no. 1 2006, 25

⁸All Answers Ltd, 'Universalism and Cultural Relativism in Human Rights' (Lawteacher.net,2022), available at <<https://www.lawteacher.net/free-law-essays/international-law/universalism-and-cultural-relativism-in-human-rights-international-law-essay.php?vref=1>> accessed 22 August 2022

human rights are defined separately in different settings of human civilization.⁹ By contrast, cultural relativism is an anthropologically derived ideology that analyzes ethics, law, politics, cultures, and proponents that no truth or culture is superior to any other. Cultural relativists consider that ethics and morality may vary from society to society; they think all cultures are equal and that no universal or proper lifestyle exists but that all is related to cultural conditions and contexts.¹⁰ No one can or should be directly or indirectly forced to change their cultural practice just in the name of promoting the aim of human rights. Cultural changes in a particular society are realized organically by a particular group of people through their continuous journey of a considerable time. They do not happen suddenly by external, foreign lawmakers, NGOs, preachers, or tourists.

3. Understanding Gender Discrimination Based on Cultural Relativism

Women have been subjected to unimaginable forms of abuse, including rape, forced prostitution, political exclusion, forced maternity status, physical attacks, homicides, discrimination, and many other genital-circumcision interventions throughout the world, and often these absurd activities are being legitimized in the name of customs of a society. Ironically, these traditions, which maintain their lower social status, play a "keeper" role for women when these traditions persist, and women remain socially disadvantaged.¹¹ Initially, incorporating an international treaty on women's rights seemed to be a matter of development. However, the CEDAW has not changed women's lives in any significant way, particularly Article 2 has created significant problems.¹² The reservations have relaxed three approaches to Article 2, which has removed them from Article 2 obligations.¹³ Such reservations are very common, especially in Islamic countries, and conventions have a limited effect on those countries. Several Muslim-dominating countries, including KSA, the Islamic Republic of Iran, Syria, Lebanon, etc., have declined to ratify the convention, claiming that the entire convention hurts the cultural value of their society.

⁹ Ibid

¹⁰ Sandra Danial, 'Cultural Relativism vs. Universalism: Female Genital Mutilation, Pragmatic Remedies.' *The Journal of Historical Studies*, Vol. 2, 2013, 3

¹¹ Geraldine A. Del Prado, 'The United Nations and the Promotion and Protection of the Right of Women: How Well Has the Organization Fulfilled Its Responsibility?' *W & M Journal of Women & Law* (1995)

¹² UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979

¹³ Rebecca J. Cook, 'Reservations to The Convention on The Elimination of All Forms of Discrimination Against Women' 30 VA. J. INT'L L. 643 (1990)

At the same time, some other countries also see this treaty as an imperialist tool of the Western world.¹⁴ Ironically it is not just the Arab or Muslim world that just gave reservations; the US itself, which frequently comes up as the keeping role in international human rights, is yet to ratify the convention.¹⁵ These countries, however, responded to the convention keeping the reservation, and in fact, the states applied the same rule in ratifying other international human rights instruments. The United Nations Universal Declaration of Human Rights and The International Convention on Civil and Political Rights have provisions to protect women's rights. The ICCPR includes provisions against discrimination and specific conditions for civil and political equality between men and women.

For example, in a society that allows abortion of female fetuses in the third trimester of pregnancy, the prohibition of torture and other cruel, inhuman, or degrading treatment outlined in Articles 5 of the Universal Declaration of Human Rights and 7 of the International Covenant on Civil and Political Rights may be fully upheld, but the notion that abortion of female fetuses qualifies as such treatment may be rejected.¹⁶ This shows that despite different manifestations of cultural relativism, non-Western cultures can be considered in the human rights framework. According to many proponents of cultural relativity, the human rights paradigm needs to be modified to place more emphasis on collective objectives than individual rights.

Nevertheless, the private nature of the practices prevailing in various cultural setups worldwide indicates that local execution is a big challenge, particularly since government officials, in most cases, are unaware of the impact of cultural distortions. Consequently, efforts to support women in legal redress have not succeeded as far as the universality of the approach is concerned. Therefore, it is also necessary to formulate another way to promote the integration of international human rights law into the national legal agenda.

¹⁴ Ibid

¹⁵ Melanne Verveer & Rangita de Silva de Alwis, 'Why Ratifying the Convention on the Elimination of Discrimination against Women (CEDAW) is Good for America's Domestic Policy' (GIPWS,2021) available at <<https://giwps.georgetown.edu/why-ratifying-the-convention-on-the-elimination-of-discrimination-against-women-cedaw-is-good-for-americas-domestic-policy/>> accessed 26 December 2022.

¹⁶ Shashi Tharoor, 'The Universality of Human Rights and their Relevance to Developing Countries,' *Nordic Journal of International Law*, Vol. 142 (1990)

4. Theoretical Evaluation of the Problem

As mentioned earlier, society often justifies the negligence faced by women as firmly rooted in local cultural or religious values; that is where gender discrimination remains the most common problem. The notions of equal right and protection for everyone, irrespective of their status, remains under the light. One of the core objectives of the foundation of the United Nations in 1945 was to promote universal compliance with fundamental human rights and ensure freedoms for everyone. This has been repeated and often expressed in the international agreements on human rights afterward. The universality of human rights has since been questioned, particularly from a cultural point of view. The term "culture" is commonly used in this context as the complex that depends on all knowledge, belief, art, morality, law, and other skills and habits of a human being as part of society. Gender discrimination also applies to religion and recognizes cultural influence on societal and cultural identity, as religious texts and teachings often consider necessary.¹⁷ Whether religious belief motivates a practice, it is extremely difficult to eliminate it because community members cannot see it as something that calls for changes once they have been accepted as part of their cultural identity within a particular community. All this is an example of a conflict between culture and human rights, namely gender discrimination. Though the link itself is in between the positions as to what is the practice and what is the value of tradition. This problem is inevitably central to cultural relativism versus universality.¹⁸ An increasingly effective way is also considered in academic discourse to promote a common recognition of human rights. The idea of reconciling culture and human rights in one thread is called weak cultural relativism or relative universality.¹⁹ However, if someone tries to solve the problem of gender discrimination overnight by applying the universality of the human rights approach would certainly be resulted in a negative outcome.

¹⁷ UN Women, 'Religion and Gender Equality', available at <https://www.partner-religion-development.org/fileadmin/Dateien/Resources/Knowledge_Center/Religion_and_Gender_Equality_UNWOMEN.pdf> accessed 27 February 2023

¹⁸ Ruth Gaffney-Rhys, 'International Law as an Instrument to Combat Child Marriage' (2011) 15:3 The International Journal of Human Rights, 368, available at <<http://www.tandfonline.com/doi/abs/10.1080/13642980903315398>> accessed 21 September 2022

¹⁹ Ibid

5. Common Ground of Feminism and Cultural Relativism against Universalism

Though cultural relativism and feminism have a collided stance regarding the concept of women's rights, they share a similar ground when they criticize the Western human rights model.²⁰ One of the inherent tenets of cultural relativism is that men and women are inherently different from each other; therefore, they hold the view that men and women have different roles to play, and this variation of rights among men and women creates more harmony than drastically applying equal treatment irrespective of gender.²¹ Feminists strive to achieve the equal status of men and women irrespective of their gender, and this view leads them to one of the biggest critiques of the CEDAW for keeping the reservations and allowing the countries not to accept it.²² The provision of reservations, however, can be considered the scope for the cultural relativists to allow them not to take anything that contradicts their moral settings. However, this idea is not seen as very good in the eyes of feminists. Therefore, a universalistic approach toward human rights should be negotiated at a buffer zone where scholars of every discourse can meet.

The sheer example of implementing human rights upholding the cultural norms is the Maputo Protocol to the African Charter on Human and Peoples' Rights (ACHPR) which successfully overtook the debate of CEDAW and ACHPR for not providing adequate provisions on gender-specific cultural issues such as consent in marriage and abortion.²³ Its comprehensiveness goes beyond the ACHPR and CEDAW in addressing the issue of women with HIV/AIDS, women in armed conflicts, elderly women, and widows' rights. Unlike CEDAW, the protocol does not face any difficulty regarding legitimacy and credibility, as African women initiated and drafted it.²⁴

²⁰ Krishna Mallick, 'Common Ground of Feminism and Cultural Relativism in Human Rights Discourse: The Case of Sex-determination Test in India' , available at <<https://www.bu.edu/wcp/Papers/Gend/GendMall.htm>> accessed 27 February 2023

²¹ A.S.Z. Abadee, '*Cultural Relativism and Gender-Discriminating Norms. In: Norms and Gender Discrimination in the Arab World.*' (Palgrave Macmillan, New York 2015) 54

²² Ibid

²³ Temelso Gashaw, 'The interplay between gender and culture: How the African human rights system sought to accommodate universality and cultural relativity of women's rights' London School of Economics and Political Science, available at <<https://blogs.lse.ac.uk/gender/2020/08/31/the-interplay-between-gender-and-culture-how-the-african-human-rights-system-sought-to-accommodate-universality-and-cultural-relativity-of-womens-rights/>> accessed 27 February 2023

²⁴ Ibid

6. Observations Based on the Study

It is apparent that Universalism finds no reason to accept gender discrimination since it violates several international treaties and conventions based on Western perception. Gender discrimination would therefore be universally redressed, and its implementation would be given the highest priority. The idea of universalism, however, does not go unchallenged. In this respect, universalists agree that not all nations were represented in the development of the UDHR. Also, those who have listed UDHR were not ordinary people with ordinary problems or people of socio-demographic or socio-economic backgrounds. In addition to that, the UDHR and CEDAW have emphasized much, and maybe more importantly, western individual values.²⁵ This is one of the world's most popular critics because preferring individualism over collectivism hardly makes sense.

Consequently, western values can be understood as imposed, not so much different from the experiences of each country's colonial times.²⁶ Better living methods were then developed and

demonstrated; it must be demonstrated that the Western world is better than what practices and behaviors in the East. Approaching every society with the universal idea of human rights neglects the values, customs, and cultural bonding of a society which is not in every case a blessing for humankind and sometimes may result in even creating a cultural colony.²⁷

It is another criticism of universalism that human rights cannot necessarily be attained simply because a nation, government, and people want to do so. In order to achieve their rights, some human rights require large resources. This covers the right to a suitable standard of living, adequate and affordable food, water, shelter, and healthcare for their people. In the event of gender discrimination and universalism, the government cannot guarantee the elimination of discrimination simply because the government cannot guarantee adequate nutrition, safe drinking water, adequate shelter, and good quality education and health care because of economic limitations.

²⁵ Reinhart (n 4) 25

²⁶ Emmanuelle Jouannet, 'Universalism and Imperialism: The True-False Paradox of International Law?' (2007) *EJIL*, Volume 18, Issue 3, 379

²⁷ Abadee (n 21) 53

Universalism is not a good theory to be practiced equally across all countries irrespective of their condition. Critics often argue that the idea is imperialist and undermines minority cultures. However, all countries have the same core and common values that differ from the others, although they are exposed to widespread diversity. The idea of universalism, based on conclusions that prove its vision of equality and no discrimination, is new in thinking. In addition, it is important to note that the most effective measures cannot bring about changes from the government's apex body; it is important to implement the approach from the lowest tier to reach the people.

7. Concluding Remarks

Gender discrimination is a complex phenomenon in the issue of human rights. But its rationalization has harmed the well-being and global development of women's rights as a cultural element for many years. In recent years, however, the international community has become increasingly involved in this scourge of practice. It has significantly contributed to public awareness and understanding of the problem. Consequently, the first concrete step towards catalyzing a change in the status quo was to include "Gender discrimination" in the international human rights agenda. As mentioned above, no specifications or suggestions exist to eliminate gender discrimination. But numerous authoritative but not binding instruments subsequently addressed this loophole as result and consequence of those were the enactment of the Commission on the Elimination of Discrimination against Women (CEDAW), which adopted various principles for eliminating gender discrimination from the society. The debate between the universality of human rights and cultural relativism provides a sound basis for clarification and understanding, even if efforts are beyond discussion to resolve conflicts between cultural practices and the image or the standard of non-discrimination. Ensuring the cultural legitimacy of human rights is extremely important if women's rights are to be successfully and practically implemented.