

# THE SIGNIFICANCE AND SCOPE OF CULTURAL RELATIVISM IN MODERN INTERNATIONAL HUMAN RIGHTS LAWS

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## ABSTRACT

*This article focuses on one of the ongoing fundamental debates in international human rights discourses, regarding conflicts and possibility of compromise between two philosophical notions, namely- 'cultural relativism' and 'universality of human rights'. Upholding the idea of 'universality' as the basic premise of modern human rights law, this article argues that the idea of 'cultural relativism' that is, observance of international human rights respecting different cultural beliefs, values and practices should not be abandoned wholly. It is also specifically pointed out here that the reservation of many states on compliance of international human rights in order to avoid their respective 'state obligation' on basis of 'cultural relativism' are not grounded on sound reasoning and true meaning of 'cultural relativism'. Recognizing an inevitable necessity of reconciliation between two conflicting but overlapping notions of human rights, this article endeavours to find out such an harmonious approach and proposes that the idea, i.e. 'universalism' should be coined and interpreted reasonably and liberally, giving space to incorporate elements of relativists' concerns in the framework of international human rights regime and compliance mechanism. In this regard, this article endeavours to explore whether the weak view of cultural relativism should fit within the framework of universal international human rights laws. It also explores different techniques to integrate cultural diversity into the universality of human rights so that an effective, coherent and all- accepted compliance mechanism can be promoted across the globe. In order to facilitate this argument, this article also shows that many of universal international human rights provisions are capable of being adopting different cultural and societal particularities.*

## I. INTRODUCTION

Human rights, as set out in international human rights treaties and documents, are founded on the notion of being 'universal'. They are meant to be entitled by every human being, without reference to his or her different particularities, i.e., sex, gender, religion, colour, race, nationality and, above all, cultural beliefs etc. The 'universality' of human rights is clearly established and recognized in international law discourse. This universal nature of international human rights

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norms and standards are arguably premised on 'Western' beliefs, which are distinct from those of 'non-Western'—'Asian', 'African', 'Islamic' or other cultures. The present world is heavily culturally diverse. In the age of free market economy, technology and globalization, in spite of the fact that different cultural beliefs and practices intermix or intermingle, the existence of conflicting cultural elements can neither be denied nor be eliminated. Thereby, the idea of 'cultural relativism'- observance of international human rights respecting different cultural beliefs, values and practices should not be ignored or brushed away in to-to from the ongoing pursuit of universal human rights. On the other hand, the reservation of many states on compliance of international human rights in order to avoid their respective 'state obligation' on basis of 'cultural relativism' are not grounded on sound reasoning and true meaning of 'cultural relativism'. Given the fact of people's prone to stick to their own culture and existence of various conflicting cultural standards, which can never be turned into one identical system, resorting to extreme or fundamentalist approach to either side is not feasible for effective observance and protection of human rights throughout the world. The abovementioned facts inevitably necessitate an approach of reconciliation between two conflicting but overlapping notions of human rights. To this end, the idea, i.e. 'universalism' should be coined and interpreted reasonably and liberally, giving space to incorporate elements of relativists' concerns in the framework of international human rights regime and compliance mechanism and the mild view of cultural relativism should be allowed into the whole corpus of human rights. To do so, three different but interrelated techniques have been suggested in particular i.e. the theory of inclusive universality, the receptor approach, the theory of preservation of human dignity.

## II. MEANING OF 'UNIVERSALITY' OF HUMAN RIGHTS

Human rights are by nature universal. It is the basic premise upon which the idea of modern human rights law is based. 'Universality' refers that each human right is inherent to all individuals by virtue of their mere birth as human being and nothing else need to be considered to claim such rights. The phrase 'universal human rights' is used to assert that human rights are applicable to all human societies equally without distinction on any ground and without reference to any particular cultural beliefs or identities.

The universality of human rights has been clearly established and recognized in international law through human rights treaties and other international documents. According to *Alston*, the fact that various human rights instruments have been drafted within the framework of the UN and have been widely ratified is a proof for the existence of universally shared

values.<sup>1</sup>The United Nations Charter of 1945 proclaims that human rights are 'for all without distinction'. The Charter further commits the United Nations and all member states to action promoting 'universal respect for, and observance of, human rights and fundamental freedoms for all'. Thus, all member states of the United Nations are under a legal obligation to promote and protect human rights, which are not selective, nor relative but universal, regardless of particular cultural perspectives.<sup>2</sup>

As the cornerstone of the International Bill of Rights, the Universal Declaration of Human Rights affirms consensus on a universal standard of human rights. The title of the Universal Declaration of Human Rights, 1948 clearly depicts the universal nature of human rights by incorporating the word 'universal' into it. Its preamble proclaims the Declaration as a 'common standard of achievement for all peoples and all nations'<sup>3</sup>.

The universality of human rights are further established by the two international covenants on human rights, namely- International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil and Political Rights. The other international standard-setting instruments which address numerous human rights concerns, including genocide, slavery, torture, racial discrimination, discrimination against women, rights of the child, minorities and religious tolerance also affirms universality of human rights.<sup>4</sup>

Most recently, the Vienna Declaration and Programme of Action, adopted in June 1993 by the United Nations World Conference on Human Rights in Austria, has reinforced the universality of human rights, stating, 'All human rights are universal, indivisible and interdependent and interrelated'. This means that political, civil, cultural, economic and social human rights are to be seen in their entirety and, henceforth, one cannot pick and choose which rights to promote and protect.<sup>5</sup> They are all of equal value and apply to everyone.<sup>6</sup>As if, to settle the matter finally, the Vienna Declaration states in its first paragraph that "the universal nature" of all human rights and fundamental freedoms is

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<sup>1</sup> Alston, P., "The United Nations and the Elliptical Notion of the Universality of Human rights", (1987) *Is Universality in jeopardy?*, New York, United Nations, pp.54-64

<sup>2</sup> The Challenge of Human Rights and Cultural Diversity', United Nations Background Note, United Nations Department of Public Information DPI/1627/HR—(March 1995), at <http://www.un.org/rights/dpi1627e.htm> .Last accessed on July 14, 2014.

<sup>3</sup> United Nations, Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc. A/810 71 (1948).

<sup>4</sup> *supra* note 2.

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*