



# The Correlation between Cultural Relativism and the Universality of Human Rights: An Analysis based on Diverse International Views and Standpoints

Fathima Rasha\*

## Abstract

*Human rights are the entitlements of human beings and standards of human life through which dignity and freedom of humans are protected. Human rights are considered to be grown from various social norms, religious, political, and legal philosophies. However, when it comes to recognition of human rights, the question arises whether human rights have to be recognized with a universal value or by giving due regard to cultural values. Trying to find an answer to this, we shall look at whether human rights pre-existed the culture or culture pre-existed the human rights. It can be argued that norms such as dignity, equality and justice existed beneath the cultural values and just because such norms were not labeled 'human rights' in such cultures, it cannot be contended that cultures have no reference to human rights. At the same time, it can also be argued that, since morality is standardized differently in different cultures there is a high probability of cultural practices overriding the basic threshold of human dignity. Therefore, this article considers and compares cultural relativism and universality of human rights in the light of specific important expressions and standpoints of states and related actors made in the global sphere, to arrive at a conclusion.*

**Keywords:** *human rights, universality, cultural relativism, social integration, cultural diversity.*

---

\*LLB .Hons, University of Jaffna, Lecturer (Temporary), Department of Law, University of Peradeniya

law.faculty@kdu.ac.lk

Human rights are rights we have, simply because we exist as human beings - they are not granted by any state.<sup>1</sup> These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status.<sup>2</sup> They range from the most fundamental - the right to life - to those that make life worth living, such as the right to food, education, work, health, and liberty.<sup>3</sup> The ‘universality’ of these rights is often debated against ‘cultural relativism’.

Universality of human rights means that human rights must be the same everywhere and for everyone.<sup>4</sup> By virtue of being human, every individual is entitled to inalienable rights and freedoms that are indivisible, interrelated and interdependent. These rights ensure the dignity and worth of the human person and guarantee human well-being. Universalists argue rights are not created by humans but inherently born with them. Hence, they believe, human rights treaties recognize the rights that pre-existed and do not create them. Article 2 (2) of ICCPR states, State Parties are to take the “necessary steps... to adopt such laws or other measures as may be necessary to give effect to the rights *recognized* in the present Covenant.” Article 2 (1) of ICESCR states, States are to undertake steps, individually and through international assistance and cooperation, with a view to achieving progressively the full realization of the rights *recognized* in the Covenant. In both of these provisions the term ‘recognized’ is significant as the rights are not tended to be created but being recognized of their existence. In contrast to this, article 9 of the Sri Lankan constitution refers to the rights as having been *granted by the constitution*, which is not correct from the point of view of universality and the inherent

---

1 ‘What are human rights?’, What are human rights? | OHCHR, Accessed 21 May 2023 4.00 pm

2 Ibid

3 Ibid

4 ‘Universality and diversity – Special Rapporteur in the field of cultural rights’, Universal-ity and diversity | OHCHR, Accessed 20 May 2023 10.15 am

nature of human rights, where rights are not granted by anyone to anyone but come along with us inherently since we were born.

Cultural relativism is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives.<sup>5</sup> Cultural relativists argue that Human Rights shall be understood according to the cultures. And this theory holds that culture is the principal source for validating a moral right. For instance, article 16 (1) of the fundamental rights chapter in Sri Lankan constitution states, all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this chapter.<sup>6</sup> Thereby accordingly, the personal laws which had discriminatory provisions that prevailed before the enactment of the constitution were considered lawful even though it went against substantial provisions of fundamental rights. Personal laws in Sri Lanka have vividly been woven around religious norms and cultures of different communities.<sup>7</sup> Relativists argue, even though international human rights standards are set universally; such human rights cannot be enforced practically without a medium called culture and social norms. And the principle of cultural relativism further holds, since one can realize his personality through his own culture, human rights cannot be realized by a person in an absence of his cultural relevance. And it's expressed by relativists that culture contributes

---

<sup>5</sup> Cultural relativism in terms of human rights can be defined as the position according to which local cultural traditions (including religious, political, and legal practices) properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society. Fernando R. Tesón, *International Human Rights and Cultural Relativism*, 25 VA. J. INT'L L. 869 (1985), Available at: <https://ir.law.fsu.edu/articles/30>

<sup>6</sup> Article 170 of the constitution defines 'existing law' as any law and written law, respectively, in force immediately before the commencement of the Constitution which under the Constitution continues in force.

<sup>7</sup> For example, under Thesawalamai law in Sri Lanka the property rights of married women are restricted where it is mandatory for her to obtain husband's permission for any transaction regarding her property. This violates the right to equality clause enshrined in Article 12 of the constitution but yet the provision is still held valid in accordance with article 16 of the constitution.

to better realization of human rights and human personality.

The contradiction in cultural relativism arises when cultural values and norms vary from one to another and from time to time. As no culture can be evaluated superior to another and no norms from time to time can be evaluated for its supremacy, the problem arises as to through which values human rights are to be given effect. And next the contradiction between universality and cultural relativism appears when practices which are traditionally deep rooted in cultures are against fundamental values of being a human. There prevails a threshold of values, going below of which will end up in loss of human identity and personality. If such values or qualities are taken away from humans, humans will be reduced to nothing. For example, in 1987 An Indian girl Roop Kanwar of 18 years of age committed 'Sati', a tradition where the widowed wife kills herself in the pyre of her husband. She was a university student, and her marriage was insisted on by her parents. Even though it was not evident whether sati was committed voluntarily or under pressure, this incident led to a large social outcry. When Human Rights activists protested against the tradition of 'sati' many people from the Rajput community came out for the tradition claiming 'sati' is a significant part of their culture. Those who stood for 'sati' made the young girl a symbol of devoted wife and erected a shrine to honour her too. They branded human rights defenders as 'western imperialists' who have forgotten old Indian tradition over western ones.

The idea of cultural relativism contends that the main social unit is community and not individual. There is the community or the society they live in, which gives the individuals their personal identities. In that case, if it's morally right to the community they live in to impose its own will on an individual without his or her consent, whether such impositions should be still upheld when

it ends up harming human beings is the question. However, in the above issue of ‘sati’ in India, the fundamental norm of right to life was upheld at the end by the Indian government enacting the Rajasthan Sati Prevention Ordinance in 1987. Section 2(c) of the ordinance defined ‘sati’ as the burning or burying alive of any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or any woman along with the body of any of her relatives, *irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or otherwise*. This act prevented the commission of ‘sati’ and all the acts coercing, forcing or glorifying it.

Yet again, the big question arises here, whether the relationship between cultural relativism and universality of human rights is *always* hostile and contradictory.

Universal standards of human rights were usually challenged by communist states which are of the view that in the international human rights law, European interests have been privileged.<sup>8</sup> The Declaration of the 1993 *Asian regional meetings in Bangkok for the World Conference on Human Rights* set out that,

*“While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”*<sup>9</sup>

Accordingly, from time to time, states and other stakeholders have expressed both cultural relativist and universalist ideologies in the

---

<sup>8</sup> D. Otto, Rethinking the ‘Universality’ of Human Rights Law, *Human Rights Quarterly* (1998) at 5.

<sup>9</sup> Declaration, *Regional Meetings for the Asia of the World Conference on human rights*, Para.

global arena, despite being attacked either by uniform approach to human rights or notions on right to culture respectively. Scholars have maintained that the cultural relativist fracture has its main expression in Asian countries whereas universality has its strong foundation in the West.

Now if we are to analyze the inter-relationship between the principles of ‘universality of human rights’ and ‘cultural relativism’, some specific important views expressed by universalists and cultural relativists in the global sphere come into play.

Universal Periodic Review (hereinafter UPR) is a mechanism adopted by the UN Human Rights Council emerged from the 2005 UN Reform process.<sup>10</sup> It is to periodically examine the Human Rights performance of all 193 UN Member states. Certain important views of cultural relativism and universality and a vivid idea about their approach to human rights have been expressed by the countries in their UPR reports.

### **China:**

China has stated in its November 2008 UPR report, that it respects universality and indivisibility of human rights but however,

*“Given differences in political systems, levels of development and historical and cultural backgrounds, it is natural for countries to have different views on the question of Human Rights. It is therefore important that countries engage in dialogue and cooperation based on equality and mutual respect in their common endeavor to promote and protect human rights.”<sup>11</sup>*

---

10 A process established by General Assembly Resolution 60/25 of 3 April 2006.

11 Human rights council working group on the universal periodic review fourth session Geneva, 2-13 February 2009, National report submitted in accordance with paragraph 15 (a) of the annex to human rights council resolution 5/1 china, A/HUMAN RIGHTS/RES/5/1/CHN/1 of 10 November 2008. Para. 6.

Further the report went on to contend that, as the People's Republic of China was founded in 1949 and the Chinese people won national independence and liberation, since then the Chinese people have become the masters of the country in the true sense, and a fundamental social and political system for the promotion and protection of human rights has been established."<sup>12</sup>

Although the differences in backgrounds and cultures were recognized in the Chinese statement above, ultimately it is looked forward to arriving at a middle ground through dialogues about the ways to implement human rights. And apparently, the universal and the relativist approaches to human rights cannot be singled out in order to achieve a greater objective. Since the implementation of human rights is verily a human affair and cultural and social identity of humans cannot be alienated from them, the radical universal approach to human rights cannot penetrate the social system unless mutual understanding and compromises are met.

And furthermore, according to *Breslin, Shaun and Taylor*, the Western world had developed human rights to respond to 'state-society' relationships under the capitalist economy; but in China looking at the political and ideological history, they had achieved

---

12 Human Rights Council Working Group on the Universal Periodic Review Fourth session Geneva, 2-13 February 2009 Advance unedited version compilation prepared by the office of the high commissioner for human rights, in accordance with paragraph 15(b) of the annex to human rights council resolution 5/1 - People's Republic of China (including Hong Kong and Macao Special Administrative Regions (HKSAR) and (MSAR)), A/HUMAN RIGHTS/WG.6/4/CHN/2 of 16 December 2008;

Human Rights Council Working Group on the Universal Periodic Review Fourth session Geneva, 2-13 February 2009 summary prepared by the office of the high commissioner for human rights, in accordance with paragraph 15 (c) of the annex to human rights council resolution 5/1 - People's Republic of China (including Hong Kong and Macao Special Administrative Regions (HKSAR) and (MSAR)), A/HUMAN RIGHTS/WG.6/4/ CHN/3 of 5 January 2009; A/HUMAN RIGHTS/11/25\* (Reissued for technical reasons) 5 October 2009, 2-33;

Human Rights Council Decision 11/110 Outcome of the Universal Periodic Review: China, 17 June 2009.

the harmony in the state-societal relationship under Confucianism.<sup>13</sup> In the Confucian ideal of harmony, for the proper functioning of the society, a tremendous weight has been imposed on interpersonal harmony, such as the harmony between ruler and minister, between parent and child, between husband and wife, between siblings, and between friends etc.<sup>14</sup> This arrives at a conclusion that there had been no need for individual guarantees for protection from the state since the harmony is already achieved. However, China is now leaning towards accepting universal standards of human rights about which there is deflecting international criticism that it is moving to a more humane plateau where instead of respecting human rights, they put on a façade to placate the international human rights regime.<sup>15</sup>

## Vietnam:

The February 2009 UPR report of Vietnam speaks about a history of struggles for national independence and freedom, and that the people of Vietnam have always treasured the *sacred values of human rights, notably the right to self-determination, the freedom to decide one's own fate and the right to live in dignity*.<sup>16</sup> The report goes on to contend that *human rights cannot be detached from national independence and sovereignty*.<sup>17</sup> Vietnam considers *national independence as a condition and basis for the protection*

---

13 Ibid

14 Li, Chenyang. "The Confucian Ideal of Harmony." *Philosophy East and West*, vol. 56, no. 4, 2006, pp. 583–603. JSTOR, <http://www.jstor.org/stable/4488054>. Accessed 14 June 2023.

15 Cmiel, K. The Recent History of Human Rights. *The American Historical Review* 109, no. 1, (2004): 117-135.

16 Human rights council working group on the universal periodic review fifth session Geneva, 4-15 may 2009, National report submitted in accordance with paragraph 15 (a) of the annex to human rights council resolution 5/1 - Viet Nam, A/HUMAN RIGHTSC/WG.6/5/VNM/1 of 16 February 2009, Para. 7.

17 Human rights council working group on the universal periodic review fifth session Geneva, 4-15 may 2009, National report submitted in accordance with paragraph 15 (a) of the annex to human rights council resolution 5/1 - Viet Nam, A/HUMAN RIGHTSC/WG.6/5/VNM/1 of 16 February 2009, Para. 59-60.



of human rights. Vietnam, having a colonial and enslaved past, and being victim of many wars of aggression, realizes that *human rights have universality characterizing each society and community*.<sup>18</sup>

The above expression is impactful and to be noted from where the notions hail. Certainly, a state's history, roots and its road to independence has played a role in how the particular state conceives the notion and standards of human rights. The above expression strongly interlinks sovereignty and self-determination with protection of human rights. Sovereignty itself can be seen as a human right hailing from the right to choose and the right to privacy. Clearly the state intends to be free and dignified first to give effect to the furtherance of human rights. This reminds of the notion that the creation of human rights being a normative response to oppression. Oppression is being subjected to unjust and cruel exercise of power, specifically when those who are in power are very dominant leading to the people being unable to even protect their own basic interest to live and lead a life with liberty. And thereby it is contended that the desperate position of humans under oppression led them to recognize their fair interests as individual and collective rights, from where onwards the human rights regime started to grow. Hence the origins of human rights are also tracked back to human experiences of oppressions and related social backgrounds in certain legal philosophies. Thus, it becomes a big question now as to how the universal standards of human rights may be held high, separated from the cultural elements in human lives, where the culture itself has paid a way to the recognition of human rights.

---

<sup>18</sup> Human rights council working group on the universal periodic review fifth session Geneva, 4-15 may 2009, National report submitted in accordance with paragraph 15 (a) of the annex to human rights council resolution 5/1 - Viet Nam, A/HUMAN RIGHTS/C/WG.6/5/VNM/1 of 16 February 2009, Para. 61.

## Singapore:

The state of Singapore has always been standing on its own, when it comes to perceiving international standards of human rights. The country being economically strong and stable, its international ties and global influence have been constant through the means of trade, media and tourism. Even though in the West it is conceived that the wealth and openness of a country can be easily coupled with fulfillment of civil and political rights, Singapore has been distinct in pursuing economic development and avoiding increased political freedoms and rights along the way. For instance, in Singapore there exist restrictions on right to freedom of expression and assembly, right to privacy and the state still exercises canning as a corporal punishment.

Whenever the confrontations arose between Singapore's approach and confirmation to international standards of human rights, Singapore has unapologetically tried justifying its actions by referring to Asian culture, another way of life.<sup>19</sup>

If we look at the roots of Singapore, the Singaporean society cannot be called wholly and purely Asian. There exist prominent influences from colonization. Yet, it tends to uphold the so-called Asian approach to human rights, putting forward its 'will to differ' amidst the Western universalists.<sup>20</sup> Singapore strongly believes that cultural diversity plays a big role in the human rights equation and it does not want to be homogenized giving itself into Western interpretation of human rights. Such 'will to differ' and relativist ideologies can be received well as far as they serve the richness of the culture and go in line with the inherent rights confirmed underneath the cultural elements.

---

<sup>19</sup> Simon S.C. Tay, Human Rights, Culture, and the Singapore Example, *McGill Law Journal*, vol 41 no 4, 1996 CanLIIDocs 35, 745

<sup>20</sup> *Ibid*

It is also often argued that Singapore has gone for a trade-off of human rights which is otherwise be called ‘The *Lee Kuan Yew* Hypothesis’ of rights and development’, according to which certain human rights would necessarily be traded-off in order to achieve economic development and prosperity.<sup>21</sup> This contention has too been counter-argued that the Asian view of human rights puts emphasis not on individual rights which are the so-called Western constructs but rather on ‘duties.’<sup>22</sup> Without considering the restriction on civil and political rights as oppressions the state emphasizes to look at it as a consequence of a failure of duties or responsibilities that come along with the rights. And it is contended that the rights can be earned by the individual by fulfilling their duties. In such ways, the perceptions of and approaches to human rights differ from Western ideologies which considers right as self-evident and not earned;<sup>23</sup> Or in other words it can be said, the Asian view of human rights has a developmental basis where basic social and economic needs such as food, education, shelter come before the political rights.<sup>24</sup>

With the state views and standpoints discussed above on universality and cultural relativism of human rights, for further analysis on the interconnection of the same, we shall now move on to certain important views expressed at the UN General Assembly Third Committee’s 73<sup>rd</sup> session, held on 23<sup>rd</sup> October 2018 involving social, humanitarian and cultural rights over country-specific mandates, for situations in Myanmar and the Democratic People’s Republic of Korea.<sup>25</sup>

---

21 A. Sen, “Freedoms and Needs: An Argument for the Primacy of Political Rights” *The New Republic* (10 January 1994) 31

22 B.I. Schwartz, *The World of Thought in Ancient China* (Cambridge, Mass.: Belknap Press, 1985)

23 *Ibid*

24 E. Jones, “Asia’s Fate: A Response to the Singapore School” [1994] *National interest* 18.

25 Seventy-Third Session, 29th & 30th Meetings, GA/SHC/4241, 23 October 2018.

The committee opined that cultural sensitivities and relativist arguments do not absolve states from their fundamental human rights obligations. Special Rapporteur in the field of cultural rights at the 73<sup>rd</sup> session of the General Assembly *Karima Bennoune* emphasized; tradition is often invoked to justify the status quo not to rectify the prevailing encumbrances into human rights. The parties of the committee expressed that human diversity should not be a threat to universal rights but a reality and resource to protect and promote human rights. The atrocities of Nazi camps are a result of misconception of ‘culture’ and ignorance about cultural diversity and universal human rights. The special rapporteur continued to contend,

*“Cultural diversity and universal human rights are mutually reinforcing and interlocking; one cannot be used to override or justify the violation of the other. Cultural relativism which uses culture to take away rights rather than amplify -them is- destructive and the exclusions from rights protection it creates are grave.”*<sup>26</sup>

Further it was contended in the committee session that the Convention on the Elimination of All Forms of Discrimination against Women is the human rights instrument which contains most reservation clauses, many of them based on culturally relativist arguments. It is thus surprising to have relativist arguments finding their way into UN resolutions. The parent document of universality of human rights, the Universal Declaration of Human Rights (hereinafter UDHR) states in article 27,

---

26 Statement by Karima Bennoune, Special Rapporteur in the field of cultural rights at the 73<sup>rd</sup> session of the General Assembly, ‘Relativist Claims on Culture Do Not Absolve States from Human Rights Obligations, Third Committee Expert Says as Delegates Denounce Country-Specific Mandates, Relativist Claims on Culture Do Not Absolve States from Human Rights Obligations, Third Committee Expert Says as Delegates Denounce Country-Specific Mandates | UN Press , Accessed 25 May 2023 12.30 pm

*“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”*

Accordingly, the UDHR has identified *culture itself as a universal human right*. Therefore, *universality of human rights and cultural diversity are cross fertilizing factors* that do not undermine one another. Universality shall not be an idea that belongs to any country, culture, region or religion. In the words of Special Rapporteur *Karima Bennoune*, UDHR is not an imposition of the values or cultures of any one region of the world, but rather a foundational challenge to entrenched systems of racial and sexual discrimination that were prevalent in the world.<sup>27</sup>

In line with these arguments, it is also to be noted that the regional mechanisms of human rights can also be in a way construed as a reflection of cultural relativism. For example, the preamble of the European Convention on Human Rights starts with the phrase, “We the *like-minded people...*” which refers to the individuality and commonality of the Europeans. And the Human Rights charter of Africa is named as “African Charter on Human and *People’s Rights*” where the term ‘people’s rights’ is directly linked to the nationhood of Africa and its pluralistic communal and clans system. The respective charter did not want to concern human rights in isolation, without giving due regard to their unique essence of culture. Hence the emphasis of various regional conventions differs based on the backgrounds and context of various regions. Such mechanisms even though can be perceived to be in support of cultural relativism, they cannot be held offensive to universality

---

<sup>27</sup> Statement by Karima Bennoune, Special Rapporteur in the field of cultural rights at the 73rd session of the General Assembly (23 October 2018),

Statement by Karima Bennoune, Special Rapporteur in the field of cultural rights at the 73rd session of the General Assembly | OHCHR, Accessed 26 May 2023 5.15 pm

since the ultimate objective of regional mechanisms is to give effect to and integrate universal standards of human rights into the societies by using different means and methods suitable to their respective regions.

Thereby, there are both radical and moderate stances in cultural relativism and universality. Radical cultural relativism would hold that culture is the sole source of the validity of a moral right or rule. Radical universality would hold that culture is irrelevant to the validity of moral rights or rules, which are universally valid.<sup>28</sup> Radical cultural relativism may lead to violations of human rights; whereas the radical notion of universality of human rights may lead to lack of social integration and implementation of human rights and violations of cultural rights of people. Since ‘human nature’ is a social as well as a natural product, radical ends of both of these theories are inapplicable. A proper balance and moderation between these two approaches can definitely ensure better recognition and implementation of human rights. That is because although human rights are considered universal and are of universal validity, when it comes to protection of human rights all that is needed will be efficient social integration and enforcement. By that virtue, as contended by Special Rapporteur *Karima Bennoune, universality about human rights shall be construed as about human dignity and not about homogeneity.*<sup>29</sup> Accordingly, cultural diversity shall be duly utilized as a strength and opportunity for better realization of human rights and shall not be considered hostile to the same. And in due course, progressively in the long term, the notion of

---

28 Donnelly, Jack. “Cultural Relativism and Universal Human Rights.” *Human Rights Quarterly*, vol. 6, no. 4, 1984, pp. 400–19. JSTOR, <https://doi.org/10.2307/762182>. Accessed 14 June 2023.

29 Statement by Karima Bennoune, Special Rapporteur in the field of cultural rights at the 73rd session of the General Assembly (23 October 2018).

Statement by Karima Bennoune, Special Rapporteur in the field of cultural rights at the 73rd session of the General Assembly | OHCHR, Accessed 26 May 2023 9.30 pm

human rights can itself become a 'culture' where awareness and education about the subject is widespread and well-integrated within societies.