



## **The Nexus between Universality and Cultural Peculiarities of Human Rights in Arts and Society**

Grace Malachi Brown (Ph.D.)

Senior Lecturer, Department of History and Diplomatic Studies, Faculty of Humanities, Ignatius Ajuru University of Education, P.M.B. 5047, Rumuolumeni, Port Harcourt, Rivers State, Nigeria

---

**Abstract:** *Most of the international human rights' Instruments do not say what human rights is, but international instruments like the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights have listed a number of rights to be enjoyed by individuals as human beings. This study examined the nexus between universality and cultural peculiarities of human rights in arts and society. We analyzed some non-western societies in which, their cultural practices are mainly Islam, Sharia and Hinduism, including the Chinese and Asian viewpoints on human rights. The study concludes that in view of the different conflict of values in our societies, human rights principles needs further refinement, interpretation, discussions and adaptation to resolve these conflicts, using an enforceable international human rights law.*

**Keywords:** *Arts, cultural peculiarities, human rights, nexus, society, universality*

---

### **1. Introduction**

The term "Human Rights or Fundamental Rights" has been variously defined by text writers, jurists, human rights' advocates, international instruments and social scientists. Olisa Agbakoba and Stanley Ibe (2004:13) view the term "fundamental right" as a right which stands above the ordinary laws of the land and which is antecedent to the political society. It is a precondition to civilized existence. It is pertinent to observe that the Charter of the United Nations does not contain definition of fundamental or human rights' except in its preamble where it made references as follows: "We the Peoples of the United Nations Determined...to reaffirm in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women." Most of the international human rights' Instruments do not say what human rights is, but international instruments like the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights have listed a number of rights to be enjoyed by individuals as human beings. Human Rights or Fundamental Rights can be traced back to the natural rights advocated by natural law philosophers in the ancient history. Such philosophers include John Locke, Montesquieu, Voltaire, Jean-Jacques, Rousseau, etc. John Locke in his writings associated with the Revolution in England in 1688 (the Glorious Revolution) postulated that certain rights self-evidently pertain to individuals as human beings because they existed in the state of nature before humankind entered civil society. That, important among these rights are the right to life, liberty or freedom from arbitrary rule and

property. That human being is born into a civil society pursuant to a social contract, human being surrendered to the state the right to enforce these rights and not the rights themselves. That the states' failure to secure these natural rights, gave rise to a right to responsible and popular revolution. The writings of these philosophers impacted great influence in the western world of the 18<sup>th</sup> and early 19<sup>th</sup> centuries in the development of human rights. Apart from the Revolution in England in 1688 and the resultant Bill of Rights, there was French Revolution led by Marquis de Lafayette, which resulted in the Declaration of the Rights of man of the citizen on 26<sup>th</sup> August, 1789. The theme of this declaration was that men are born and remain free and equal in rights. This declaration asserted the natural rights of man and the observance of certain fundamental principles as essential for self government.

Although, human rights formed an ingredient of liberal democracies, they remained essentially matters of exclusive domestic jurisdiction, the concern of each particular state from which, other states were precluded. Since the sixteenth century, the principle of sovereignty has enjoyed much reverence. There were a few exceptions to the rule on the status of human rights. According to Umozuruike (1986:62-63), the human rights of foreigners were regarded as a matter of international concern. No state was obliged to admit foreigners; once admitted, they were entitled to minimum standards of treatment in international law and no state could plead as justification for ill-treatment that it had lower standards to which its own nationals were subjected. In fact, individual human beings were not deemed to have international legal rights as such; they were said to be objects rather than subjects of international law. Thomas Buergenthal (1995:2-3) observed that the manner in which individuals were treated was said to fall within the domestic, jurisdiction of that state, which did not affect the rights of other states.

The Treaty of Versailles, 1919, that ended the First World War laid down the foundation for the internalization of certain human rights. The peace treaties guaranteed the minorities full and complete protection of life and liberty, without distinction in terms of birth, nationality, language, race, or religion. The inhabitants of the territories affected were entitled to the free exercise, of their right to life, liberty and so forth irrespective of their creed, religion or belief. They were also entitled to the same treatment and security in law and in fact as the other subjects of the states. By Article 19 of the Treaty of Versailles, Germany renounced in favour of the Allies all its rights and duties over its overseas colonies. The same went for Turkish dependent territories. In Article 16 of the Treaty of Lausanne the administration of those territories was given to some of the victorious powers to promote their well-being and development as a sacred trust to civilization.

Article 23 of the League Covenant provided that members shall maintain fair and humane conditions of labour for men, women and children both in their own countries and in all countries to which, their commercial and industrial relations extended. This Article 23 of the League Covenant made them to undertake to ensure just treatment of the native inhabitants of territories under their control. The International Labour Organization (ILO) was founded under the league treaty to improve the conditions of labour. It is pertinent to mention that at this stage the mode of enforcement in the internationalization of human rights.

## **2. Are Human Rights a Universal or Cultural Concept?**

This study will now consider whether human rights are universal or cultural concept. It is maintained that among human rights writers, there exists a clear range of views on the question of human rights concepts. The different views reflect the academic as well as political debates on

the definitions and focus of human rights.

Somehow, some of the views mirror the cold war scenario and the north south divide. One can also detect the view that is fit for political expediency agenda of some governments. The different views, however, can also be seen as results of the different histories of evolution of the idea of human rights. The different opinions of human rights held by human rights advocates, commentators and activists are based on the ideas of the different background that they find themselves.

For instance, Johnson Glen (1988:42-43), gave the summaries of the different dimensions of human rights as follows:-

- (a) Whether rights claims are based on status as an individual human being or status as a member of some community or group or persons;
- (b) The extent to which differential treatment of persons is permitted on grounds of achievement and ascription;
- (c) The emphasis on rights compared to duties or obligations and the extent to which rights and duties are thought to be interdependent;
- (d) The emphasis on so-called economic and social rights compared to the emphasis on civil and political rights, sometimes conceived as a difference between positive rights of governmental obligation to provide economic and social well-being and the negative rights of governmental obligation to refrain from abridging political and civil rights;
- (e) The extent to which rights are viewed as absolute or relative.

It is said that these dimensions are inter-related, though separately classified. This classification can also be used as an analytical framework.

### **3. Universality of Human Rights**

Universal human rights affirmations are expressed in indigenous cultural forms and can be grounded in values common to the great religious traditions of the world. The Persians have used the Arabic word *jagg*. The Hindi and Bengali have their *adhikar* and the Sanskrit *svetve*, the Thais their *sitthi*, the Koreans- all means “rights”. Traer Robert (1991:158), The universal declaration does not affirm the institutions westerners often equate with human rights, such as parliaments or Supreme Courts, but rather allows for various cultural forms by simply setting forth those political, social and economic rights that contribute to the dignity of the individual person. While Jack Donnelley (1989:50) maintained that some human right writers of the universal school argue that the human rights concept actually evolved in the west, but this does not mean that human rights are not universal. Harro Iron Senger (1993) argued that while the concept of human rights actually originated in Europe (but not designed to become universal due to exclusive of women and other non-European races), universal human rights adopted after the second world war are as “new to the west as they are for China” and thus there has been only

fifty years since the two cultural spheres were confronted with such a universal conception for the first time.

Other scholars such as Hurights Osaka (1986:50) and so forth, would argue that there exists a “common culture of modernity” that has engulfed all societies by virtue of the rise of the concept of global economy. States, regions, cities, families, patterns of life, are all shaped by this culture. Human rights become part of a world social process, the institutional expression of which is the international law of human universal standards of human rights.

Regardless, however, of the basis or justification for the universality argument, the universality of human rights must be recognized in the context of the different cultures that actually exist.

Human rights today are essentially universal requiring only relatively modest adjustment in the name of cultural diversity. The Vienna declaration of 1993 in support of universality of human rights expressly stated thus:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights in a fair and equal manner on the same footing, and with the same emphasis while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems to promote and protect all human rights and fundamental freedoms.

But Clarence Dias (1993:44-45) identified three main sources of attacks on the universality of human rights namely, proponents of the new world order, developing country governments and leadership of religious fundamentalism movements and ethnic anarchists. He further explained that these attacks are sustained for the following reasons:

- (a) To justify the denial of human rights to some sections of their people;
- (b) To deny new assertions of human rights by excluded groups such as women and indigenous people;
- (c) To negate and destroy cultural pluralism;
- (d) To impose disabilities based on culture, religion, ethnicity, etc upon minorities.

#### **4. Human Rights and the Non-Western Societies**

An examination of some cultures reveals some critical views on human rights such as follows:

##### **(a) Hinduism**

Human rights are not universal since not every person is given the same rights. And even if human rights is extended to all people, it would still be unacceptable because of the insinuation that nonhuman beings are inferior to human beings and that their rights can be trampled upon to promote the right of humans. Whereas in western culture, like the United States of America, it

draws heavily on western liberal ideas, emphasizes absolute principles of civil and political rights based on individualism and equality of opportunity. While the philosophical under-pinning of modern India, by contrast to the west rest on group based rights and duties of a relative and differential nature with a substantial emphasis on economic and social rights as well as civil and political rights.

**(b) Islam/Sharia**

There is a conflict between Sharia and international human rights standards. For instance, The Sharia Law of Apostasy. According to Sharia, a Muslim who repudiates his faith in Islam, whether directly or indirectly is guilty of a capital offence punishable by death. This aspect of Sharia is in complete conflict with the fundamental human rights of freedom of religion and conscience. The Sharia law of apostasy can be used to restrict other human rights such as freedom of expression. A person may be liable to death penalty for expressing views held by the authorities to contravene the official view of the tenets of Islam. This interpretation of the law of apostasy was applied in the Sudan as recently as 1985, when a Sudanese Muslim reformer was executed, because the authorities deemed his views to be contrary to Islam.

Conflict between Sharia and human rights also relates to the status and rights of non-Muslims. Sharia classifies the subjects of an Islamic state in terms of their religious beliefs. That is Muslims or non Muslims or unbelievers. In modern terms, Muslims are the only full citizens of an Islamic state, enjoying all the rights and freedoms granted by Sharia and subject only to the limitations and restrictions imposed on women. While non-Muslims suffer serious violations of their human rights. They are not entitled to equality with Muslims.

It is observed that there is violation of women rights in Muslim States. For instance, the most important general principle of Sharia affecting the status and rights of women is the notion of *qawama*. This *qawama* has its origin in verse 4:34 of the Quaran. That is men have *qawama* (guardianship and authority) over women because of the advantage they (men) have over them (women). According to Sharia interpretations of this verse, men as a group are the guardians of and superior to women as a group, and the men of a particular family are the guardians of and superior to the women of that family.

This belief in *qawama* renders women incapable of holding general public office, which involves the exercise of authority over men, because in keeping with the verse 4:34 of the Quaran, men are entitled to exercise authority over women and not the reverse.

Another general principle of Sharia that has implications for the status and rights of Muslim women is the notion of *al-hijab*, the veil. This means that women have to cover their bodies and faces in public. According to Sharia interpretations of verses 24:31, 33:33, 33:34 and 33:59 of the Quaran, women are supposed to stay at home and not leave it except when required to by urgent necessity when they are permitted to venture beyond the home, they must do so with their bodies and faces covered. This places restrictions on women's ability to hold public office and to have the access to public life.

In family life, men have the right to marry up to four wives. Men have the power to exercise complete control over women during marriage, to the extent of punishing them for disobedience if the men deem that to be necessary. The wives are to submit to their husband's will and endure his punishments. A husband is entitled to divorce any of his wives at will; a wife is not entitled to a divorce, except by judicial order on very limited and specific grounds.

In Sharia. women are incompetent witnesses in serious criminal cases regardless of their

individual character and knowledge of the facts. In civil cases, where a woman's testimony is accepted, it takes two women to make a single witness. And monetary compensation to be paid to victims of violent crimes or to their surviving kin, is less for female victims than it is for male victims.

These cases show how human rights of the people in Islamic states are subjected to the cultural and religious beliefs and undermined the international standard of human rights. According to Donnelly, he stressed that the social and political precepts of Islam do reflect a strong concern for human good and human dignity such concern is important in itself, and even a prerequisite for human notions. But it is in no way equivalent to a concern for, or recognition of, human rights.

**(c) Chinese View**

The word for human rights came to China from Japan in the mid-19<sup>th</sup> century. From the current Sino Marxists point of view, human rights are not naturally given, but "commercially given", which is to say, they developed at a certain stage of economic development. According to this view human rights situation in China cannot appreciably improve until China's level of economic development has been noticeably raised through the process of socialist modernization.

**(d) Asian View**

Some governments in Asia maintain that there are certain values found to be common in Asia. These values are perceived to be contradictory to those of the west and thus support the view that values are not universal and common to all people.

The following are some of these "Asian Values" as observed by Yash Ghai (1994:8-9):-

- a. Placing society above the individual and upholding the family as building block of society;
- b. Resolving issues through consensus instead of contention;
- c. Importance of duty as counter point to right;
- d. Obligation of the community to look after its less advantaged members.<sup>41</sup>

Asia has the major religions of the world. Hinduism, Buddhism, Shintoism and Islam have developed in the region. Christianity has thrived in some parts of the countries in Asia. Each religion has varying set of beliefs and values, and the same religion does not manifest itself uniformly in its discourse about human rights at all times in all countries. Religion would not appear to hold a key to universalism. Indeed most religion in some sense deny the claims of equality: traditionally Hindus found people of other religions polluting, and most other religions accord the non believer an inferior status in both religious and secular systems. The various cultures in Asia seem to be upholding the importance of community. Cultures, therefore, developed around this concern. This aspect of Asian culture is opposite to the western emphasis on the individual.

**5.Harmonising Different Cultures with Human Rights**

Apart from the suggestion of the above approaches in resolving the conflicts between

universality and cultural peculiarities on human rights; it is equally possible to harmonize the different cultures with Human Rights. More recent thinkers propose to more positive view about the relationship between human rights and the different traditional cultures. The following are the views about some cultures:-

**I. Islamic Culture:** Understanding human rights to be an international and cross-cultural demand is tantamount to the insight that these rights cannot be simply integrated into the existing framework of the Sharia. It has to be admitted that there are fundamental tensions between traditional Sharia norms and the requirements of human rights. These tensions need careful assessment. What is at stake is a self-critical re-evaluation of the Sharia and its underlying principles: an opportunity to seek out ways to genuinely mediate between and reconcile the competing normative requirement of Sharia and human rights. Islam has the potential to cope with new challenges and demands in a pragmatic way. And in conformity with the humane flexibility that has largely marked the Sharia, some of the conflicts between different normative requirements might be settled.

Rights must be linked to duties, and individual claims must be reconciled with the common good. In the Islamic view human rights are universally true, and yet implementation of these rights may require various forms. Challenged by the west, Islamic societies are rediscovering their own tradition in new ways. While accepting human rights in their own faith, Muslims however, affirm the universality of human rights. In addition, a number of Muslims have stirred to action by the lack of protection for fundamental human rights, in their own societies as well as in the rest of the world.

**II. Chinese Culture:** In Chinese culture, human rights must be a matter of consensus because of the Confucian culture which has shaped for centuries the life and understanding of the people. Yet the Chinese also affirm individual rights and the rule of law. Chinese intellectuals must have the responsibility for achieving the acceptance of the two political cultures and honour, both as Chinese tradition and exercise of western inspired human rights if they could use their freedom of thought to advance an appropriate political theory sustaining human rights.

**III. Buddhist Culture:** Buddhists do affirm human rights, as central to their understanding of dharma. Despite the conceptual difficulties of justifying human rights, as central to Buddhist faith, at least some Buddhists find human rights language expressive of their religious commitment to the three beliefs; the Buddha, the Dharma and the Sangha. Thus, the Dalia Lama as quoted in Traer Robert (1991:160) says that ...”All have equal right to be happy...because of our common humanity”. Thus, the shared aspiration of gaining happiness and avoiding suffering, as well as the basic right to bring it about, are of prime importance.

**IV. Hindu Culture:** Modern concepts of human rights are a reflection of Western influence and interfere with traditional notions of the dharma. Yet Hindu reformers seek to interpret dharma in ways which support the notion of human rights. This is not easily done. Perhaps this is why the Indian Constitution sets forth the major human rights affirmed in the Universal Declaration without providing any philosophical foundation for them. The fact remains, however, that most educated

Hindus not only accepted these fundamental rights but insisted that they expressed age-old Hindu principles. Hindus affirm both dharma and human rights.

## **6. Conclusion**

From this article, we can observe that the Vienna Declaration of 1993 made human rights to be universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, including the arts and society. While the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedom.

Therefore, discussions on the universality and relativity of human rights, suggests a situation of conflicts of values. In some cases, that conflict is seen in the opposite ideas between some human rights principles and some traditional systems. There is a common ground that human rights principles still need further refinement/interpretation as they apply to concrete situations. While communities are not static and can have the flexibility to incorporate ideas that are couched in an unfamiliar language, present day societies are changing and will thus find a room for discussion and adaptation to growing internationally-enunciated principles on human rights. It may not therefore be a case of conflict of values but a process of clarification of the varying formulations of principles that aim to serve the needs of people in their respective societies.

## **References**

- Agbakoba Olisa and Stanley Ibe, "Travesty of Justice: An Advocacy Manual Against the Holding Charge", Human Rights Law Service, Lagos, 2004.
- Agbakoba Olisa, "The Concept of human Rights: Enforcing Economic, Social and Cultural Rights in Nigeria, Rhetoric or Reality". A Publication of the Human Rights Law Service.
- Alison Dundes Rentein, "A Cross-Cultural Approach To Validating International Human Rights – The Case of Retribution Tied to Proportionality" in *Hurights Osaka*, AA Literature Review.
- Buergenthal Thomas, International Human Rights in a Nutshell, 2<sup>nd</sup> Edition Washington, D.C. West Publishing Co. 1995.
- Dias Clarence, "The Universality of Human Rights – A Critique", in *Lokayan Bulletin*, New Delhi India, Volume 103, 1993.
- Harro Iron Senger, "Chinese Culture and Human Rights", in Human Rights and Diversity – Europe, Arabic – Islamic World, Africa and China, Wolfgang Schmale (ed), Keip Publishing, Goldbach, London, 1993, *Hurights Osaka Human Rights and Cultural Values – A Literature Review*.
- Heiner Bielefeldt, "Muslim Voices in the Human Rights Debate", *Human Rights Quarterly*, John Hopkins University Press, Baltimore, 1995/
- Jack Donnelly, Universal Human Rights in Theory and Practice, New York, Cornell University Press, 1989.
- Johnson Glen, "Human Rights in Divergent Conceptual Settings – How Do Ideas Influence Policy Choices", in Human Rights Theory and Measurement, David Louis Cingranelli, (ed), Macmillan Press, London, 1988.



- Osaka Hurights, “Human Rights and Cultural Values. A Literature Review”, [www.hurights.or.jp](http://www.hurights.or.jp), in R. J. Vincent, Human Rights and International Relations, Cambridge University Press.
- Pathak Raghunadan Swarup, “Introductory Report on Universality of Human Rights”, in Universality of Human Rights, Council of Europe, Strasbourg, 1989.
- Traer Robert, “Faith in Human Rights: Support in Religious Traditions for a Global Struggle”, Georgetown University Press, Washington, DC, 1991, culled from Hurights Review.
- Umozurike, U.O., “The present State of Human Rights in Africa”. The Calabar Law Journal Vol. 1 No. 1, Calabar, Fourth Dimensions Publishing Co. Ltd 1986.
- Umozurike, U.O., Introduction of International Law, Ibadan: Spectrum Law Publishing, 1993.
- Yash Ghai, “Human Rights and Governance: The Asia Debate”, in Center for Asian and Pacific Affairs, Occasional paper, The Asian Foundation, San Francisco, November 1994.