

Mutual Inter-dependence of Indian cultural diversity and Universal Human Rights

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Abstract:

Culture has its own implications and perspectives in every society as it is made up of collective minds of people including critical, creative, informative and knowledgeable. When Minds of different people work together collectively, then only we can call something acceptable and unacceptable. We speak in different forms of same language, we criticize something, we accept something over the other, we reject things, we evolve different social structure with different forms of dance, art, festivals etc. Culture affects each other in different aspects of life and the way we transact with each other. Traditionally, India is rich in cultural values and diversity as different societies prevail and preach different values of their culture to the individuals belonging to that specific society. Cultural bonds directly connect with our rights as well because many thinkers and philosophers have evidently worked upon the connection between our culture and human rights. Our country has always been an informed and knowledgeable society as it has always welcomed thinkers and philosophers to walk on this land with their thoughts and creativity. India is a land of thoughtful minds and spectrum of these minds are always being embraced through practice and writings.

Keywords: Cultural diversity, Human Rights, UDHR, Equality, non – discrimination

Introduction:

Basically, Hinduism is at the center point in India and is very famous for its cultural ties due to which we follow family system with rooted moral values in the Individuals. It is not only Hinduism which is propagated and preached here but other religions are also preached viz, Sikhism, Christianity, Buddhism, Sufism, Islam etc. Our culture has always emphasized the need of informed mass through quality education system by opening a window to acknowledge the importance and power of education for making different perceptions. Education is the tool of power, which is carried forward from generation to generation. Indian culture has evidently transformed the moral value system into institutionalized system of education as the children were being sent to Gurukuls and Ashrams for taking education as per their cultural norms. Culture has promoted education system since earlier times and all the religions promoted a holistic education system for learning purpose and thereby evolution of basic human rights.

In all religions, there are certain elements which may vary from one culture to another but the basic understanding is one regarding learning that the methods and modes of learning in all respects, progression towards distinguished learning to understand things in different perspectives, outlined dimensions of existence through learning etc. Religion touches different cultural values but philosophy of each one remains same.

Philosophical Aspect:

There are certain stages in every religion for human development like in Hinduism, people follow ‘Brahamachari’, (it is like student life) where one is supposed to accept one’s command and at the same time one can develop rationale for unwillingness to accept one’s command. Other could be ‘Grihasta’ where one can lead household life by taking care of the

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family, their children, by fulfilling responsibilities towards family, thirdly 'Vanaprastha' which is a sort of semi-retired life and another one is 'Sanyas' which is retired life- free from all obligations. It is not only Indian culture but western culture also follows same set of elements.

Islam also follow same elements in its purest forms like *Shariat*, later on the Britishers passed Shariat Act in 1937 which covers matters of marriage, inheritance and divorce, other is *Tareeqat*, its focus is on learning through training, another could be *Ma'refat*, which means the apparatus, and *Haqeeqat*, which, as the name suggests, is the divine truth.

If we talk about Buddhism (which is also very old religion in India), it follows these basic elements like the first component comprises of a partially enlightened individual, the next component is that of an individual who has not attained salvation completely but has wishes and ill-will to an extent but lesser than the partially enlightened person of the society, the other component of Buddhism covers those individuals who are in a way entirely released from the whims of worldly desires, fantasies and ill wills against other individuals, and at the end Buddhism talks about complete salvation, it is a stage when an individual after mediating into oneself does not seek rebirth after their death.³

These abovementioned are the values or the stages on which the culture of a particular religion is based and we learn these values through culture which is embedded in our education system because culture does not teach us how to respect others, how to learn things, how to interpret things, how to show empathy towards others, ultimately it is the values in which a particular individual grows and learns through the elements of a particular religion and education. There are holy books of each religion like the *Mahabharata*, the *Ramayana*, the *Bhagvat Gita*, the Bible, the Quran, the Guru Granth Sahib, which were being developed as a tool to educate people so that their consciousness could be reshaped and awakened. If we try to learn things with our conscience then somewhere we may able to relate with human rights, and it is very implicit in the past that there would be one or the other kind of documents mentioning certain human rights like from 272-231 BC, the edicts written by Ashoka, the Great ruler of India and in 622 AD, the Muhammad drafted a constitution type of document in Medina to mark a resolution between different tribes and families, so that peace could be maintained. Vasudhaiva Kutumbakam is a rich legacy containing concepts of human rights and is a primary source to study and understand human rights.⁴

Historical Perspectives of Human Rights:

If we trace back the historical development of human rights, then it is there within from thousands of years and is drawn upon aspects of legal, psychological, philosophical, cultural and religious developments throughout. It is directly evident that the concept of human rights is as ancient as any old civilization because there were traces of mankind, their culture, their behaviour, their way of living, their basic human rights, etc and for depicting the same, there is always a recorded version of all such things in one form or other like some sorts of inscriptions, sculptures, manuscripts, books, pratishtis, etc. They were being followed by later dynasties. In history also, the human rights of individuals are being protected by the rulers at one stage or another. Human rights are always being respected and justice had been imparted to the individuals on the basis of policy of protection and importance attached to such human rights. It was gradual since centuries but after world Wars, that the concept of human rights developed faster and grew at a faster rate after the tragic incidents happened to the individuals in the world wars. Prior to the world war, there was not much codification

³ Historical development of human rights from Historical Development of Human Rights.

⁴*Id.*

done either at the national or the international levels for the protection and implementation of human rights.⁵

The famous book of Kautilya, i.e. 'The Arthashastra' mentions about the duties, rights and privileges of the kings, pandits, ministers in the court of the King, individuals, soldiers etc. The book enshrines the duties of a king like, administering the state entirely with the help of ministers and soldiers including protection of kingdom from external attacks and aggressions, another duty towards the individuals like maintaining law and order by protecting the interests of the individuals, generating income sources for the masses, building roads, parks, sanctuaries, a ruler has to safeguard agriculture also, etc. Minister's duty is also mentioned in 'the Arthashastra', who is supposed to be a good politician, good speaker, good debater, he has to please individuals from different fields and also to give good piece of advice to the King, etc.

Kautilya has also mentioned about the duties and obligations of citizens because taking care of human rights is not the sole responsibility of the Head of the state, citizens also owe some duties parallel with the State. They must be cautious of any mischief committed against others like fire etc. In any case, any house catches fire, then it is the duty of the citizens to help that particular house by taking appropriate steps. Individuals must take care of their surroundings by keeping them clean and hygienically sound, no one shall throw any dead animal or body of human being nearby their surroundings, individuals must dispose it in an appropriate manner so that the others do not get affected. The document also mentions the rights of women and most importantly, property rights of women have been talked about along with all the cultural ties of dowry, her Stridhana and passing of her share to her heirs etc.⁶

Another great social thinker worth mentioning here is 'Gautama Buddha', who himself was well educated and had knowledge to respect elders, friends, family, relatives and other citizens of the society. He is very famous for his regard towards human rights and cultural values. In his literary works, he wrote texts considering human values and human rights, that how an individual must behave in the society and mentions code of conduct to be followed by others so that human rights must be valued along with culture. He also emphasised that if some individual hurts other individual in any manner, he would be considered a person of no human values or with less human values. Buddhism prioritised the dignity of humans whether he is a ruler or an ordinary human being, all are equal in context of their human rights. He gave concept of rationalism and reasoning to accept one's words or not. He focussed on free expression of views by individuals.

Ashoka, the great ruler was so inspired by the social message of the Buddhism that human rights are the priority of any reign that he himself embraced Buddhism and spread his message around the world and established a welfare state for the individuals without any discrimination on the basis of caste, creed, religion, colour, sect, etc along with all the cultural values. Later on Gupta dynasty also worked for the welfare of the people by establishing a welfare state. The documents in the form of inscriptions also depicted that a ruler would be successful only if he takes care of her subjects along with their human rights. It was his duty to protect the province from external invasions and internal revolts.

Another great ruler 'Harshavardhana's work was also based on the policies of Gupta dynasty. He was so cautious about the natural and human rights of his subjects that he used to stroll in the streets of the country in disguise as an ordinary man so that the human rights could not be violated. The cultural values of all the dynasties can't be mentioned here except few but as per abovementioned discussion, the crux of the principles of the dynasties of middle ages was

⁵ Historical development of human rights from Historical Development of Human Rights.

⁶ S.N Sabat, *Human Rights in Indian Culture: A Bird's Eye View*, IJHR Vol 12, 2008.

that they followed the basic policy of human rights and natural rights of the individuals in all respects keeping in view their cultural values along with. They all tried to develop the human and natural rights along with the cultural ties as per the prevailing society.

The culture of Islam tradition is also focussed on human rights of individuals as it is very much evident from the holy book of Islam “Quran”, which preaches us equality and unity. The Quran also talks about the property rights of women including their upliftment in every respect. In later stages, ‘The Mughal dynasty adopted the policy of universal reconciliation and tolerance as the Ruler Akbar was the main force behind this policy of humanitarian law, freedom and equality. Almost all the sultans worked upon the policy of human rights till the British period.’⁷

The policy of Human Rights was re-defined and improvised during the British reign. Individuals fought for their human rights including social, political, civil rights and freedom as they resisted the supremacy of any foreign rule. People of India realised that freedom is their basic human and fundamental right, so the fighters started to revolt against the supremacy and demanded swaraj for their country. Pursuantly, the Constitution of India Bill, 1895, also known as the Swaraj Bill and the Home Rule Document was enacted. In later years, many committees were formed which focussed on human and fundamental rights. Consequently, the Constituent Assembly included Human Rights in the constitution of Independent India. However, lately, there have been conflicts between the authority and the citizens; and to understand the problem between the two; it is necessary to examine the origin of authority.⁸

Universal Human Rights:

The enlightenment of Human Rights is drawn on the theory of Natural Rights which were first declared during the American and French Revolutions. Later this theory of natural rights was institutionalized in the Universal Declaration of Human Rights (UDHR) then the knotty array of treaties, monitoring bodies and courts followed. The atrocities and barbarous acts like, extermination of about 17 million people during Holocaust, etc of World War II (which ended in May 1945) brought to notice that the rights of human beings are not universally accepted and outraged the conscience of mankind. With the end of this war the United Nations (UN) was founded by 51 countries on October 24, 1945.⁹ The UN and the international community vowed to never allow such monstrous conflicts to happen again. For the first time the countries agreed and the world leaders designed a global blueprint to guarantee the freedom and rights with universal protection to every individual everywhere for complementing the UN Charter in the form of a document- UDHR. The UDHR was adopted by the UN on December 10, 1948 and this adoption acknowledged 30 universal human rights to be the foundation for justice, freedom and peace.

These universal human rights include Right to Equality¹⁰, Right to Life¹¹, Right to Equality before Law¹², Right to Remedy¹³, Freedom of Movement¹⁴, Freedom of Religion or Belief¹⁵, Right to Education¹⁶, etc are imbibed in the Indian Constitution in the form of Fundamental

⁷ *Supra* note 6.

⁸ *Supra* note 6.

⁹ Available at: <https://www.un.org/un70/en/content/history/index.html> (last visited Jn. 10, 2021).

¹⁰ Universal Declaration of Human Rights, Article 1: “We are all born free and equal”.

¹¹ Universal Declaration of Human Rights, Article 3: “Right to Life”.

¹² Universal Declaration of Human Rights, Article 7: “Right to equality Before the Law”.

¹³ Universal Declaration of Human Rights, Article 8: “Right to Remedy”.

¹⁴ Universal Declaration of Human Rights, Article 13: “Freedom of Movement”.

¹⁵ Universal Declaration of Human Rights, Article 18: “Freedom of Religion or Belief”.

¹⁶ Universal Declaration of Human Rights, Article 26: “Right to Education”.

Rights. The human rights are inalienable but can be taken away only in specific circumstances in accordance with due process and are universal. They can be broadly classified as economic, social, cultural, civil, political and freedom of movement, thought, conscience, religion, opinion and expression. All these sets of human rights are indivisible and inter-dependent and are inherent to all of us irrespective of nationality, gender, religion, language, caste or any other status.

Eleanor Roosevelt was appointed as the Chairperson of United Nations Commission on Human Rights, while delivering the speech on the 10th Anniversary of UDHR in 1958 she said, “***Where Do Human Rights Begin?***” and continued by saying, “*Where, after all, do universal human rights begin? In small places, close to home- so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.*”¹⁷ This part of her speech has become notable in understanding that the human rights are for everyone of us in all parts of our daily life.

Culture and Cultural Rights

Culture is the root of human development and is a means to attain intellectual, social, moral, emotional and spiritual existence. It is the pattern learned beliefs, customs, arts, attitudes, shared behaviours of a particular people, section and group of a community and it is passed down from generation to generation. Culture therefore, is the way of life of a group of people and it includes religion, language, behaviour, rituals, dress, code of manners, etc. Culture takes different forms across ages and space and the humankind is made up of myriad unique societies. It is necessary to ensure harmonious interaction among people and groups across the borders.

Social cohesion is vital for maintaining peace all over the world. Nobody should play with cultural diversity to infringe upon human rights guaranteed. ***It became crucial for this reason that the rights are given and ensured to this particular section of people and communities for preserving their distinct cultures, values, languages and scripts in the form of Cultural Rights. Cultural rights, therefore, are indispensable part of human rights and are universal, indivisible and inter-dependent.*** Cultural rights take into account the rights of individuals and communities in relation to their culture and particularly connect cultural heritage and expressions with the people producing them. Fortifying the cultural rights of individuals and communities becomes more important as the cultural minorities, artists, cultural heritage and cultural expressions are increasingly under attack.

Human Rights and Cultural Diversity -

The UDHR, since its inception guaranteed Cultural Rights as the basic human right to everyone at all places. Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Life (1966) also recognize the importance of Cultural Rights. The cultural rights are enshrined in and guaranteed by the Indian Constitution (1950) in the form of Fundamental Rights. Hence, it can be established undoubtedly that cultural rights are the foundation upon which humans exist. Universalistic strains are omnipresent in the human rights, due to profound cultural and traditional diversities. ‘***Equality***’ is the basic tenet

¹⁷ Amnesty, Available at: <https://www.amnesty.org.uk/universal-declaration-human-rights-UDHR> (last visited Jan. 12, 2021).

of human rights and it includes the right to be different and respect other cultures. Culture is a crucial factor in shaping human mind, their thinking and their behaviour to a great extent. Thus the influence of culture on mankind affects their basic attribute, i.e. human rights. Culture is the principal drive responsible for socialization of individuals and is the major antecedent of the consciousness of the community. An author wrote, *“The impact of culture on human behaviour is often underestimated precisely because it is so powerful and deeply embedded in our self-identity and consciousness.”*¹⁸ Neither the UN nor the national government can force people to respect the rights of each other. The connection between human rights and cultural diversity was clearly established by the Universal Declaration on Cultural Diversity in Article 5 and is adopted in 2001 by the member states of United Nations Educational, Scientific and Cultural Organization (UNESCO) and it holds that ***“the defence of cultural diversity is..... inseparable from respect for human dignity” and this implies, “a commitment to human rights and fundamental freedoms”***.¹⁹

The human rights furnish moral and legitimate framework to promote and preserve both the diversity between cultures and diversity within cultures. Article 27 of the UDHR states that, ***“everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”***.²⁰ This unequivocally implies the incorporation of cultural rights as human rights for all and that the individuals and communities have the right to freely participate in the cultural life of the society, interrogate, investigate, understand, make use of, maintain, exchange and develop cultural expressions and cultural heritage and also to benefit from cultural expressions and cultural heritage of others.

Culture is the foundation of human dignity and identity. Acknowledging and accepting the link between cultural rights and human rights is of essence to safeguard and promote culture along with protecting human rights. UNESCO notes that, *“While ensuring the free flow of ideas by word and image care should be exercised that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multi-lingualism, equal access to art and to scientific and technological knowledge, including in digital form and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity”*.²¹ The cultural heritage should be preserved in all its forms, enhanced and handed on to the coming generations as a record of human history.

Equality and Non-Discrimination vs. Cultural Rights:

It is sometimes argued that the protection and promotion of cultural rights would clash with the basic principles of human rights, viz, equality and non-discrimination. The foundation of cultural rights is that the individuals and communities are different and so should be treated differently hence it does not focus on equality. It is asserted that the cultural rights have differentiating effect instead of focusing on equality while human rights focus on equality. Incongruously, the key principles of human rights are equality and non-discrimination and they also entail diversity and the right to be different. But having equal rights does not mean to be treated equally. ***Equality and non-discrimination not only express that equal situations should be treated equally but also express that unequal situations should be***

¹⁸Abdullahi Ahmed An-Na'im (ed.), *Human Rights in Cross-Cultural Perspectives. A Quest for Consensus* (University of Pennsylvania Press, Philadelphia, 1995).

¹⁹ Universal Declaration on Cultural Diversity, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its thirty-first session on November 02, 2001.

²⁰ Universal Declaration of Human Rights, Article 27: “Right to Cultural, Artistic and Scientific Life”.

²¹The UNESCO Universal Declaration on Cultural Diversity, (Paris, November 02, 2001), available at: <https://www.un.org/en/events/culturaldiversityday/pdf/127160m.pdf>.

treated unequally. Differentiation is lawful but discrimination is unlawful. ***Cultural differentiation is made so that the rights and freedoms are enjoyed on an equal footing.***

There must be reasonable criteria and objective for cultural differentiation. Apparently, it seems that cultural rights differentiate but in reality they are based on equality. Culture reaffirms human dignity and human rights shield cultural diversity from negative side effects. So, the cultural rights, like other fundamental and human rights, cannot be enjoyed without limit. That is why there is a limitation clause for all human rights in the general framework of UDHR and is outlined in Article 29(2), which states that,

“in the exercise of his rights and freedoms, everyone shall be subject to only such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.²²

Unlimited exercise of cultural rights must not be allowed and imposing certain justified restrictions on them such as, the right to participate in cultural life can be limited- in case these cultural activities use discriminative or racist expressions. In this regard, Article 29(3) of UDHR mentions, ***“rights and freedoms in no case be exercised contrary to the purpose and principles of the UN”.***²³ An appropriate benchmark can be that the cultural practices must not be in disagreement with the norms of human dignity and universal human rights.

Taking note of the significance of cultural rights as human rights, provisions of cultural rights are incorporated (explicitly or implicitly) in the regional human rights instruments in America, Africa and Europe, such as The European Convention on Human Rights and Fundamental Freedoms (1951), African Charter on Human and Peoples’ Rights (1981)²⁴, San Salvador Protocol on Economic, Social and Cultural Rights (1988), The American Declaration on Human Rights (1948)²⁵, etc. A homogenous worldwide culture is evolving with the creation of a ‘global village’. The most evident example of this homogeneity is that throughout the world people are eating, dressing, singing in the similarly and certain cultural attitudes have become universal trend. ***The adoption of common values and behavioral patterns are reinforcing the universality of human rights, establishing ties globally and also helps in the elimination of certain discriminatory traditional practices.*** Its negative consequence can be seen in the undermining of distinct cultural identities, weakening of ethical norms, social cohesion and these give a boost to various conflicts. During the 29th session of General Conference, the Director-General of UNESCO said that, ***“Just as the protection of biological diversity is indispensable to the physical health of humanity, so the safeguarding of cultural diversity- linguistic, ideological and artistic- is indispensable to its spiritual health”.***²⁶

Conclusion:

The culture is an important value to be protected and promoted, so the human rights framework provides a suitable, logical, justified and reasonable structure. The inter-dependence of cultural rights and human rights affirms that culture is an essential aspect of the existence, identity and dignity of individuals and communities. Human rights furnish a legal and moral constitution of preserving and promoting not only the diversities between cultures but also the diversities within the cultures. The cultural rights including the human

²² Universal Declaration of Human Rights, 1948, Article 29(2).

²³ Universal Declaration of Human Rights, 1948, Article 29(3).

²⁴ African Charter on Human and Peoples’ Rights, 1981, Articles 17 and 22.

²⁵ The American Declaration on Human Rights, 1948, Article VIII.

²⁶ UNESCO Press, 29th session of the General Conference (November, 1997).

rights are to benefit and be enjoyed by the individuals and communities. The states are under legal obligation to make a good match of culture and human rights and also energy and dedication is required for their harmonious relationship.