

INDEX

Serial	Title	Author	Pages
1	Impact of training on the awareness and knowledge on rearing of inland fisheries among farmers	Dr.K.P.Vanetha, Dr.A.Senthil	1-7
2	Marketing strategy and consumer perception about canon cameras at Shimoga city	Ms. Kusuma, Prof. Raghavendran V	8-17
3	A study on sustainable rural growth and poverty abolition through tourism in Karnataka	Ms. Kusuma, Prof. Raghavendran V	18-21
4	Brand repositioning strategies and brand perception of citizen eco drive watches	Malini M G, Raghavendran V	22-28
5	Postmodern Critique of Human Rights	Dr. Puneet Pathak, Vartika Srivastava	29-38
6	Language Acquisition and Cognitive Theories: A Debate	Dr. Gitanjali Singh	39-47
7	Technology and Financial Inclusion	G.C.Kishore Kumar and Balla Appa Rao	48-61

}

{

Index

Journal of applied research and social sciences

Peer Reviewed and Referred Fortnightly International Journal

Postmodern Critique of Human Rights

Dr. Puneet Pathak, Associate Professor, Centre for Law, CUP
Vartika Srivastava, M.Phil Scholar, Centre for Comparative Literature, CUP
Contact No. 08427789599
Email: puneetpathak9@gmail.com

Abstract:

Postmodernism as a concept evolved in the late 20th century which questions the liability of truth or real. It proclaims that the world is in a state of incompleteness and is constantly evolving. Postmodernism promotes the notion of pluralism that there are many ways of knowing and multiple truths to a fact. Whereas Human Rights are the rights inherent to all human being irrespective to one's nationality, colour, language, sex and otherwise. The idea of postmodernism poses serious threat and challenges to the concept of human rights and its values. They deny the idea that humans are entitled to certain rights simply by the virtue of being human. In this regard it questions the existence and universal applicability of human rights.

Keywords: Human Rights, Rights, Post Modernism, Postmodern Jurisprudence,

Concept of Postmodernism:

Postmodernism is a late 20th century movement in the arts, architecture and criticism, which articulates that the world is in a state of flux and perpetual incompleteness. Postmodernism as a concept, promotes the notion of radical pluralism; that any and every fact can be interpreted in multiple ways. Hence, the knowledge articulated from this perspective can be said to be uncertain, complex and paradoxical in nature. Thus knowledge is relational and all realities are woven on logical linguistic looms. Harold J. Berman, Former professor of Law at Harvard Law School maintains that there is currently a major debate over our understanding of law.¹

Postmodern law and postmodern jurisprudence depends on interpretation of the legal system using postmodern philosophy and the theories of postmodernism.² Postmodern interpretation of the law can involve critically considering legal inequalities in relation to gender, class, race, and ethnicity by acknowledging the diversity. Critical practices connected to postmodern philosophy, such as critical literacy and deconstruction can be used as interpretative tool to ensure that arrange of

¹ Quoted in Daniel A. Farber and Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (Oxford, UK: Oxford University Press, 1997) p. 39.

² Minda, Gary (1995) *Postmodern Legal Movements: Law and Jurisprudence at the Century's End* (New York: New York University Press. 1995) p.115

different and diverse values and norms are acknowledged or considered. Postmodern philosophy emphasizes the importance of power relationship personalization and discourse in the construction of truth and world views. While the idea of postmodernity had been around since the 1940's, postmodern philosophy originated primarily in France during the mid-20th Century. It was greatly influenced by the writings of Soren Kierkegaard and Friedrich Nietzsche in the 19th century and other early to mid-20th century philosophers like Martin Heidegger, Jacques Derrida and Jean Francois Lyotard.

Human Rights and Postmodernism:

The concept of Human Rights has been recognized in the Charter of United Nations. The General Assembly and the Economic and Social Council (ECOSOC) both are under obligation to protect and promote Human Rights. The ECOSOC established the Human Rights Commission in the year 1946, giving effect to the UN Charter and enabling the protection and promotion of Human Rights worldwide. The commission prepared the International Bill of Human Rights which includes Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights 1966 and International Covenant on Eco Social and Cultural Rights 1966. These instruments are widely recognized by most of the countries and are continuously working to give effect of the provision of these International instruments. Besides these, there are nine core international Human Right instruments dealing with issues like racial discrimination, discrimination against women, protection of children rights, protection of people with disabilities, forced disappearance, protection of migrant workers and protection against torcher and inhuman treatments.

Although the concept of Human Rights has universal recognition and generally considered as the touchstone for measuring the state performance in regard to the protection of rights of their citizens. Despite this fact that human rights are generally recommended, there are still some strong criticisms against the concept of human rights. One criticism refers to human rights, some-what derogatorily, as the civil religion of modernity and, by this, taken them to only a historical phenomenon of a particular culture. Other critics fear that the spread of human rights is nothing but a new and subtle version of western colonialism or imperialism, namely supremacy of its legal culture, which force value or other cultures. But actually, human rights belong to a universal legal morality, which is common to all mankind although it was thought of

in the most radical manner by western modernity. Within western legal culture, human rights are taken as a matter of course but as far as its foundation is concerned, there are difficulties which are partly of a political, partly of an intercultural, and partly of an anthropological nature. A specific philosophical justification, a transcendental foundation of human rights might help to overcome these difficulties. This foundation permits one to show the universal validity of human rights beyond liberal legal culture.³

However, one difficulty with human rights is that we expect the recognition of human rights from all cultures, but that the discourse on human rights only takes place within one of them namely the western culture. For this reason, there is a risk that human rights, instead of constituting the core of a universal legal morality, will give away their essence and will thereby decline to the level of a western value importation. In this sense, the objection of "ethnocentric thinking" can be raised, for a legal institution like human rights. Western culture claims to be valid for the whole of mankind. As the beginning of the 21st century, it is increasingly becoming obvious that international human rights face several serious challenges to their legitimacy and acceptability. These challenge have five major facets: (1) failure of international human rights to address adequately the effects of colonization; (2) relationship between international human rights and global capitalism (3) connection between international human rights, state sovereignty and democracy; (4) international human rights and violence; and, (5) implementation of international human rights.

An ongoing part of the human rights discussion since the adoption of the Universal Declaration of Human Rights is the role of culture in complicating the creation and implementation of rights in international law. This is currently being addressed as problem of cultural relativism and its apparent challenge to the universality of human rights. Undoubtedly, the cultural diversity is not a problem but rather a necessary prerequisite for the survival of diverse plurality. The powerful revival of difference as a fundamental characteristic of the quality called being human was an important development of the late 20th century and is likely to remain a central issue for the 21st century. The challenge which cultural diversity represents is not to human rights, but rather to outmoded and rigid ideas about what human beings are and

3. O. Hofe, "Human Rights in International Discourse: Cultural Concerns" 7018-7025, at 7018- 7019 in: Smelser Neil J. and Baltes Paul B. (ed.), *International Encyclopedia of the Social and Behavioural Sciences* Vol. 10 (Amsterdam/Paris/New York/Oxford/Shannon/ Singapore/ Tokyo, 2001).

rational of human rights. These ideas are themselves determined by specific histories, mainly but not solely European, and by Euro-American cultural baggage exported globally through centuries of colonization and economic globalization.⁴

The American Anthropological Association in the year 1947, on the eve of the United Nations General Assembly's vote to adopt the Universal Declaration of Human Rights, submitted a statement to the draft committee making a strongly worded cultural relativist case against a Declaration. The Association argued that respect for the individual ensures a respect for cultural differences since the individual realizes his/her personality through their culture; that no technique of qualitatively evaluating cultures has been discovered so far. Standards and values are premised on the culture from which they derive so that any attempt to formulate postulate that have grown out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of human rights to mankind as a whole. This is perhaps the most articulate voice of postmodern relativism as it came from anthropologists, whose trade advises the preservation of indigenous cultures. Claims to universality of such values as human rights are claims to power and cultural hegemony in disguise. As a result, challenges to universality of human rights have continued. Some of the strong relativist claims have been made by the American Anthropological Association about 'the world's great diversity of view on right and wrong that grew out of diverse cultures or about a lack of commonly accepted criterion for judging across cultures.' They aim to ensure that right/wrong should not be judged keeping in view the diverse outlooks and a culture shall not impose itself on the other cultures to let the peace prevail at large. For them, international human rights are merely disguised western cultural ideas. As with the onset of globalization, the traditional notions of sovereignty, domestic jurisdiction, and cultural autonomy have to face enormous challenges; and, the nations drive their way into radical transformation. In accordance to this, Xiaorong Li in his article states: "Recognizing the great diversity of values and their roots in cultures was once one step in the direction of moral condemnation of colonialism and brutal missionary expeditions. But ethical relativist's insistence on an incommensurability of cultural values...that each culture and its values are unique and cannot be compared

4. Shelley Wright, *International Human Rights, Decolonization and Globalization: Becoming Human* (London/New York: Routledge 2001), at 213-214.

with other cultures is rather a denial of overlapping and converging values between different cultures in human history.”⁵

New forms of colonialism have emerged lately in the garb of development or globalization which is not visible as aspects of human rights abuse. Political and economic monopolies on power in the form of corruption and distribution of and access to wealth and resources persist. Although the actual achievements of economic development are usually ignored by proponents of human rights standards, any attention to human rights is considered as irrelevant by the beneficiaries of corporate expansion. Generally, we fail to pay adequate attention to the effects of uncontrolled corporate penetration of much of the third world. This penetration has normally been achieved with the cooperation of national governments and elite groups who have frequently reaped large profits from these activities. There has also been insufficient recognition of the extreme social, economic and cultural dislocation felt by women, children, indigenous peoples and the poor generally when this economic penetration either fails owing to financial or structural collapse, or is instituted without regard for the human and environmental costs of uncontrolled development. The structural and theoretical paradigms within which human rights still exist, and the dominance of neo-rationalist economic discourse, tend to make the inclusion of most people as genuinely effective subjects of human rights very marginal. This is even as the universality and indivisibility of human rights is promoted by international political and economic institutions.⁶

The development of the Universal Declaration of Human Rights suggests the possibility of agreement on basic core values of human rights among a group of representatives from a wide range of cultural, religious and political backgrounds. The recent development of international law clearly indicates that we are moving beyond positivist models of state sovereignty and a horizontal international legal structure dependent on the consent of nearly 200 separate nation-states. The relationship between regional organizations, states, individuals, groups and corporate entities is being redefined. Globalization is no longer a term strictly confined to economic rationalism and free trade. With expansion of the world's economy has come an expansion of the demand for a global civil society. International human rights occupy the centre stage in this discussion. And so it can be said that we are effectively

5. Xiaorong Li, "Postmodernism and Universal Human Rights: Why Theory and Reality Don't Mix", at 1-2. See the Website <http://www.secularhumanism.org/liberary/fi/li18-4.html>.

negotiating our world. Globalization is effectively overshadowing the concept of universality as overarching claims of truth are giving way to negotiation over truth at a more human level. The concern is that by moving towards a globalized world, we may be translating vertical authoritarian notion of state sovereignty from the national to the supra-national or international level. In such a scenario it becomes important to "some aspects of a horizontal system of international law among at least nationally equal partners, but to expand membership in this global club to new location of sovereignty... peoples, individuals, corporation, labour unions, NGOs, international organizations and other entities".

The Universal Declaration of Human Rights and other covenants and treaties are not sacred texts. They are legal documents, the result of intense negotiation and compromise by very fallible human creators. These creators were and frequently still are white, male and Euro-American, but an examination of the history of international human rights indicates that this too is a simplistic and inaccurate picture. The tendency to talk about human rights, especially that relating to violence, in mystical or quasi-religious language is itself a problem. The same global forces overwhelmingly benefit the First World. Since the 1960s, human rights implementation had mainly resided either in the monitoring and complaint procedures supervised by the Commission on Human Rights (CHR), or in committee set up to monitor specific convention both within the UN and within regional arrangements. Much of the standard setting and human rights implementation that has been achieved would not have been possible without the work of individuals and groups in highlighting human rights abuse as a central concern. The investigation needs to be looked at systematically and on a global level rather than confined to the few nation-states willing to be engaged in. International law needs to include within its framework not only a criminal model of human rights enforcement, but also substantial civil and reconciliation process that can redirect attention away from punishment and toward genuine reconstruction.⁷

Although it is usual to assume that human rights are universal, it is also necessary to question this assumption. The tendency for local narratives, histories and expectations about what it means to be "human" to be inscribed into cultures and peoples without questioning the appropriateness of what these mean can lead to some difficult problems in the area of human rights. By questioning the theoretical

6. Wright, *Supra* n. 4 at p. 214-215.

7. *Ibidem*, at 219-223.

commitment to universality in a strong form we are left with the possibility of human rights as a global system of law applicable to political, economic and cultural patterns within and alongside international relation and other areas of international law. Whether human rights law is a universal system may be debatable, but it is clear that it has become a global system.

After the demise of colonialism, and with the increasing critique of Eurocentrism and the hegemony of Western values, the search for roots has changed from the attempt at establishing a one- "stranded genealogy to suggesting multiple sources. The declaration of a global culture of human rights is thus closely related to the historical process of globalization. In one sense, the notion of globalization simply states the obvious; due to increasingly rapid information and money exchange systems, we experience a time-space compression that accounts for a new global consciousness. This global consciousness has important implications, one apparently being the appeal to a transcendent culture of human rights.⁸

Seen from historical perspective, most major religious and ethical systems have been concerned with human dignity. Opinions differ, however, on whether they were also concerned with human rights viewed as one specific way to realize human dignity. Developing the human rights concept took two millennia in Western history and was so full of unforeseen links, ruptures, reversals, and coincidences, that it may convincingly be called a unique product of history. The quasi-universal emphasis on the community in which individuals had mainly duties switched in Europe and its American colonies to an emphasis on individuals and rights. Elements of the human rights concept, such as some natural law principles were available outside the West, but the combination of factors that led to its formulation was not. As the West conquered the rest of the world, it introduced its dominance and violence. At the same time, its notions of freedom, nationalism, and cultural diversity, developed initially for home consumption, fell on the fertile ground overseas. These notions, including, human rights proved able to transcend their particular roots and context. Thus whereas human dignity is universal value the claim of the universality of human rights has an

8. K. Hastrup, "Anthropology of Human Rights", 7007-7012, at 7009 in: Smelser Neil J. and Baltes Paul B. (ed.), *International Encyclopedia of the Social and Behavioural Sciences* Vol. 10 (Amsterdam/Paris/New York/Oxford/Shannon/ Singapore/ Tokyo, 2001).

anthropological basis, not a historical one, and is rooted in the universal appeal of a specific system of thought.⁹

As some scholar has pointed out, human rights law is a product of the cultural project of modernity. It has been a product of establishing the principle of subjectivity i.e. of a man-centered view of the world and of the related legal underpinning, which is part of and parcel of modernity. This subjectivist view of human rights is severely criticized and rejected by the postmodernists. They argue that the liberal conception of the self as autonomous moral agent is merely an abstraction, even an illusion, and they celebrate "the end of humanity" and all "foundations", emphasizing cultural relativism and contextuality. The postmodern critique of the subject points to an historically familiar description of the negative aspects of modernity encapsulated in such notions as exploitation, alienation, fragmentation, disenchantment, anomie and so forth.¹⁰

Global history is a history of colonialism. It has not ended. Decolonization has only just begun to free the territories, economics, cultures, minds and bodies of the majority of the world's peoples. Those individuals who cannot recognize their own position within colonialism are after the most vociferous in their demands that human rights are the representations of universal values of freedom, equality and justice. Challenges to this certainty are not "alternative", they are central. They insist that the current orthodoxies of international law be exposed in all their provincialism and the promise of international human rights laws unravel the constraints of this most closed and parochial of clubs. The nature of "humanness" incorporated within human rights must expose its often hidden assumptions about which rights are for. It is not always obvious that all human rights apply equally to everyone, or even that they should.¹¹

The revival and popularity of human rights has increased the urgency of finding a philosophical foundation for them, as the prominent legal philosopher H.L.A Hart argues that political philosophy has been based on a "widely accepted old faith that some form of utilitarianism, if only we could discover the right form, must capture the essence of political morality". According to Hart, however, this old faith is finally being replaced by a "new faith" which is that the truth must lie not with a doctrine that

9. A De Baets, "History of Human Rights", 7012-7018, at 7015-1016. in: Smelser Neil J. and Baltes Paul B. (ed.), *International Encyclopedia of the Social and Behavioural Sciences* Vol. 10 (Amsterdam/Paris/New York/Oxford/Shannon/ Singapore/ Tokyo, 2001).

10. Zuhtu Arslan, "Taking Rights Less Seriously: Postmodernism and Human Rights", (1999) 5 *Res Publica* 195-215, at 204. Also available at the Website-http://www.philosophy.ru/library/pdf/23_46/7.pdf

11. Wright, *Supra* n. 4, at 224-225.

takes the maximization of aggregate or average general welfare for its goal, but with a doctrine of basic human rights. It shall protect specific basic liberties and interests of individuals. If only we could find some sufficiently firm foundation for such rights to meet some long familiar objections for a long time, rights theorists have tried to develop arguments in defence of this new faith.¹²

A further difficulty with the idea of human rights lies in the concept of universality. The term "human rights" suggests "the rights of all human beings anywhere and anytime"; in other words, they are, by definition, rights that belong to everyone. This stems from the suggestion that there are or ought to be some moral principles common to all individuals. But whatever their intended scope, many theorists believe that human rights are a Western ideological notion and not a universal one, claiming that they have their historical origin in the relationship between the bourgeoisie and the theory of rights during the French Revolution and afterward. German sociologist and philosopher Jürgen Habermas argues that "from the very beginning an intimate relationship existed between philosophy (natural law) and the bourgeois revolution, no matter how much philosophers since they may have entertained suspicious as to the illegitimate nature of this relationship". He also draws a distinction between classical natural law and modern natural law, and defines later as positivization of the former.¹³

Conclusion:

Postmodernism in its rejection of any foundational or universalist account challenges the existence of truth or any conceptual existence for that matter. The postmodernists reject the idea that human beings have certain rights simply by virtue of being human. Foucault for instance claims that, like the individual, civil liberties are nothing but expressions of governance and disciplinary power. The postmodern human of relativity rules out the possibility of any universal claim to Human Rights. In the postmodern condition, it would be impossible to argue that individuals have some basic rights irrespective of their nationality or location. The inevitable consequence of the relativization of "truth claims" is to undercut any universal, "principled, normative basis" of natural law doctrine for claiming that human rights simply exist. Hence postmodernism assumes human rights as a synthetic expression of universality and cultural relativism within the realm of natural law in its normative and positivist dimension.

12. Arslan, *Supra* n. 10, at 200.

The postmodernists reject the subjectivist view of human rights. They argue that the liberal conception of the self as autonomous moral agent is merely abstraction, even an illusion; and they celebrate “the end of humanity” and all foundations emphasizing cultural relativism and contextuality.

13. *Ibid.*, at 201.

