Liberal Notion of Human Rights: A Critique

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Abstract

Human rights discourse is predominantly derived from the liberal philosophy. Most of the human rights declarations have been formulated incorporating the philosophical tenets of thinkers like Locke, Rousseau, Montesquieu amongst others. But all liberal conceptscannot be applied to non-western societies because they are not compatible with their different social and cultural backgrounds. Hence, scholars whether communitarians or feminists from both western and non-western worlds have challenged the liberal notion of human rights on multifarious grounds. Further, how Universal Declaration of human rights, which is derived from liberal philosophy, can be called universal when most of the third world countries were not free when it was formulated.There is no doubt that liberal notion of rights has played a very significant role in the evolution of modern human rights discourse, securing individual against multitudinous tyrannies of state and society. But non-western societies have not developed as per the parameters of liberal traditions and have different social and cultural constructs to secure human dignity. Many issues like concept of individual, priority of rights over duties, male-centrism, absence of community and cultural rights have been contentious,that have characterized the human rights debate.In order to develop a truly universal human rights, there is need to incorporate non-liberal conception of rights along with the liberal traditions. But caution has to be exercised while selecting the useful and relevant and eschewing the repugnant elements of any culture.

Keywords: Human Rights; Liberalism; Third World; Universal; Communitarian.

Liberal philosophy has shaped our dominant understanding of human rights. It lays down a unique form of relationship between the (new, modern) individual and the (new, modern) state, a relationship based on the prima facie priority of the individual over the state in those areas protected by human rights. According to liberal notion, "a human right is a right that a human person has simply by virtue of being a human person, irrespective of his or her social status, cultural accomplishments, moral merits, religious beliefs, class membership or cultural relationships" [1].It is based on liberal conception of a rational, autonomous, competitive, independent individual as the fundamental unit of society, who

are entitled to equal concern and respect.

The roots of liberal theory of human rights can be traced back to John Locke and his work *Two Treatises of Government*, published in 1689. He defended natural right to life, liberty and property of the individuals and established its supremacy over the state. Some of the important linkages between Lock's notion of natural rights and present notion of human rights can be mentioned as follows [2]: 1. Concern for equal worth and dignity of individual based on universal human nature; 2. Emphasis on the right of the individuals; 3. Conception of individuals as discrete and autonomous unit; 4. State as a means to protect and safeguard individual's rights; 5. Right to

revolt against misuse of power and arbitrary rule.

The teachings of Locke have influenced American Declaration of Independence, July 1776 and French Declarationof the Rights of Man and of the Citizen, 1789. Other liberal thinkers who have influenced development of modern notion of human rights were Rousseau, Montesquieu, J.S. Mill, T.H. Green, Rhoda Howard, Jack Donnelly, John Rawls, Ronald Dworkin amongst others. In the modern times, the liberal notion of human rights is exemplified in the Universal Declaration of Human Rights, 1948 and two Covenants-Covenant on Civil and Political Rights, 1966 and the Covenant on Economic, Social and Cultural Rights, 1966-along with two Protocols.The metamorphosis of natural rights doctrine to universal human rightshas not taken place in one go but through many stages, which can be divided as [3]: 1. the first stage is to be found in the philosophical works; 2. the second stage in the history of human rights is the transition from theory to practice, from the mere perception of a right to its enactment; 3. the 1948 Declaration commenced in the third and last stage in which the assertion of human rights is both universal and positive: Universal in the sense that the principles it contains no longer concern only the citizens of this or that state, but all human beings, and positive in the sense that it initiates a process whose end is that human rights should no longer be proclaimed and recognized as ideals, but effectively protected even against the state which violates them.

This derivation of universal human rights from liberal philosophy has been subject to multifarious criticisms. The first is regards the definition of individual in the liberal notion of rights, because the bearer of human rights are individuals, irrespective of class, gender, race or place of birth. There is necessity to understand this definition of individualto fully understand the impact of modern notion of human rights on non-western societies. Liberals define individual as essentially rational, independent, competitive and autonomous being. It ignores the nurturing cooperation and mutual respect that are the essential,not only for the development of individual but also forms the basis of human society. In non-liberal tradition by contrast, individuals have social meanings only as part of a group defined by birth.Explaining this difference through the notion of *individual* and *person*, Panikkar writes, 'nothing,could be more important than to underscore and defend the *dignity of the human person*. But the person should be distinguished from the individual. The individual is just an abstraction, i.e., a selection of a few aspects of the person for practical purposes.

My person, on the other hand, is also 'my parents, children, friends, foes, ancestors and successors...One individual is an isolated knot; a person is the entire fabric around that knot woven from the total fabric of the real...' [4]. Liberals consider differential treatment of individuals as a result of individual's achieved status, while non-liberals' conception involves differential treatment based on ascribed status. Hence, adopting liberal view of rights means becoming homogenous, "de-socialized" and "de-culturalised" beings. Further, the equalitarian focus inherent in the development of liberalism - the claim that all individuals were fundamentally equal, can not be completely reconciled with the emphasis on creative self-determination or authenticity that have changed the modern meaning of "individualism" to connote distinctiveness. Iris Marion Young argues that the ideal of impartiality upon which liberal justice is grounded produces a 'logic of identity that seeks to reduce differences to unity.

According to liberal notion, the individual does have social duties (Art. 29, Universal Dec. of Human Rights), but the discharge of social obligations is not a precondition for having or exercising human rights. The corporate sense of personhood in non-liberal tradition means that as one claims rights based on group identity, so one correspondingly has duties which flow from that identity.

Underlying the linkages between liberalism and political regime, it is argued that, 'only liberalism understood as a regime based on the political right to equal concern and respect, is a political system based on human rights [5]. Further, Jack Donnelly argues that – "......these rights in turn demand and if implemented would play a crucial role in creating a liberal society and ideal person envisioned by liberalism" [6]. But the majority of humanity do not live in such societies and have never done so. The idea of human rights as that of an ideal standard consisting of liberal democratic rights makes many of such rights irrelevant to much of humanity. Then what is the justification for calling them human rights as distinct from liberal democratic rights [7]?

AsmaromLegesse in "Human Rights in African Political Culture", argues that Declaration is universal in its intent, but not in its derivation [8]. Human rights enshrined in the Universal Declaration is a statement of values that derive directly from the liberal democracies of the western world and was formulated before most of the Third World achieved independence. It faces the danger of becoming an instrument of cultural imperialism.Two factors that account for the limited viability and

applicability of the liberal notion of human rights in the non-western world are- 1. the cultural patterns; 2. the development goal of new states including the ideological framework within which they are formulated [9].

Johan Galtung challenges the entire construction generated by liberal tradition of human rights itself [10]. According to him, there is a norm triad gradient in human rights- [the norm receivers (R),the states; the norm senders (S), the U.N. GeneralAssembly for universal human rights; and the normobjects (O) are individual human rights (S.R.O.)triad], expresses vertical slope of an ethics ofrights and duties from above rather than humancompassion. Further, the construction gives the universal and regionalorganizations of states increasing legitimacy, leading to a more centralized world society. It also gives the states increasing legitimacy leading to a more centralized national society. The construction detaches the individual knot evenmore from the net of reciprocity and solidarity leading to more alienation.

Non-liberals challenge the liberal argument that - economic and social rights, are neither universal, practical, nor of paramount importance and they are not truly human rights [11]. They argue that non-western societies place greater emphasis on the community basis of rights and duties, on economic and social rights and on the relative nature of human rights. Proponents of the "rule of law" convinced of the uniqueness of the west are not prepared to concede thatcustoms and traditional usages in most third world countries have functioned for centuries in place of "law" and that even without the "rule of law" these were conventions and traditions which bound one person to respect the rights of another [12].

Many scholars have associated liberal notion of human rights with western societies like, Joseph Raz associated autonomy with the western ways of life and its absence with immigrants and indigenous people, both black [13]. He equates non-liberals with illiberal.Brian Barry's liberalism centers around a single and narrow view of the good life and has little patience with the religious and communal ways of life.John Rawls, too, in his *Theory of Justice* advocated a narrow conception of liberal society. He does not recognize cultural identity as a primary good and a source of legitimate claims on the state.

On the other hand, Abdul Aziz Said, Chris Mojekwu and Richard Claude argue that the cultural factors are an additional - frequently overlooked but necessarily relevant element in understanding the multifactorial basis of human rights at the individual, local, national and international levels.Liberals concept of equal respect for persons confines to respect for their own cultures and ways of life. Most Third World and many First World countries have minorities and even previously dominant cultures that are threatened. For example, Indians, Inuitand Metis in Canada; Native Americans, Chicanas and Cubans in the United States, Bretons in France. The Welch in Britain; Khazaks and Uzbeks in the Soviet Union; the Aborjines; Torres Strait Islanders of Australia; and Maori of New Zealand. In extreme cases, such as the Amazonian Indians, cultural rights may be literally a matter of life and death.

The individualizing prospect of human rights deprives these underprivileged groups as such of their major political asset: mobilization and organized struggle as a group. For example, the right to education means that each individual's right to have access to public schools as defined by and organized by the dominant (majority or not) group. It does not necessarily mean the right of a group of individuals with some shared(ascribed or achieved) characteristics to institutionalize their own type of education.To be an equal member of any society, not only must we have equal "rights" but our identities must be given equal value,"just as all must have equal civil rights, and equalvoting rights, regardless of race or culture, so all should enjoy the presumption that their traditional culture has value [14]."

Some organizations such as the Minority Rights Group (London) and Cultural Survival (Boston) have adopted a broader conception of "human rights", whose discourse is concerned with the numerous rights of "collectivities"whether conceived in terms of race, gender, class, ethnicor linguistic background.

Feminists thinkers argue that abstract notion of impartiality treats women as human beings without taking into cognizance that women have specific needs and capabilities arising from characteristics concerning them alone that require protection by means of rights and without which they are fundamentally dehumanized [15].

Even in the modern west, where individualism seems to have reached the pinnacle of its historical development, few people define themselves entirely as individuals. For example, therise of an aggressively Evangelical Protestants who strongly emphasize the link between their religion and their personal identity. Most Blacks see their race as an important facet of both their self- determination and their definition of others in society.

The irony of cultural domination perpetuated by liberal regime is that it has reversed its course and

emerged within its national boundaries as well. Britain and also France, once the epitome of a powerful colonial power, is now looking inward, re-examining the very structure of national life and restructuring the position of the subdominant nationalities.It is easy for liberals to preach human rights to whole world, but dismiss one's own atrocities as minor aberrations. For example, use of Black American as cheap and disposable labor and denial of human rights toimpoverished populations remaining locked in ghettoes.

It may not be out of place to mention how Galtung, by criticizing Art. 27(2) of Universal Declaration ofHuman Rights highlights its indifference to collectivity and gender issues. Art. 27(2) of Universal Declaration of Human Rights mentions,everyone has the right to the protection of the moral and material interests from any scientific, literary or artistic production of which he is the author.The key, phrase in article, of which he is the author, highlights male chauvinism, expresses the interest of a particular class of workers only-cultural workers and denies the collectivity of workers "the right to protection" of moral and material interests [16].

Hence the entire liberal human rights tradition is based on- first, center/periphery relationship with west at the center of the world; second,universalism, with the idea that western liberal notion of rights is applicable throughout the world; thirdly, good/ evil dichotomy, where everything which is western and liberal is good and the opposite as evil, with right tomarginalize evil with crusades or deter it with atom bombs.

Further, the question of human rights is not just a liberal concept based only on the eighteenth century pronouncements of the French and American revolutions. Human rights perspective is also present in Hindu, Islamic, Chinese, Buddhist and African traditions,that very much protect the dignity of human person, though in collectivity, and not necessarilydefined in liberal rights language.To illustrate, firstly, inHindu philosophy, corporate nature of rights based on caste and collective group obligations, make little sense of a uniform standard that can be applicable to all men. It rejects single perception of truth, common to all and hence if there are many levels of rights, then all are valid. Rights bring obligations and failure to perform obligations can deprive an individual of his or her rights- a theme that is antithetical to western view [17]. With regards to Islamic perspective, Ahmad Farrag in "Human Rights and Liberties in Islam", explains that Islam is a view on social life that is spiritual rather than materialist, it formalizes the relationship between

man and God,concentrates more on duties than on rights. Correspondingly from the Chinese tradition could come a respect for the family as a unit partly by having the family as a norm receiver for basic needs provision, partly by having the family as a norm object to be protected by the state [18]. In Africa, it was a person's place of birth, his membership or belonging to a particular community that gave content and meaning to his human rights-social, economic and political. They emphasize collective or communal rights as opposed to individual rights.

European colonizers intervention and induction of liberal values in contemporary Africa, has destroyed the precolonial African authority structure and choked its concept ofhuman rights [19]. In the Buddhist conception, society is patterned on family: the political leaders - the emperor, in the past - is like the father of a family with all the powers, authority, responsibilities of the pater -families [20].

Hence,AsmaronLegesse argues that, "any system of ideas that to be universal must contain critical elements in its fabric that are avowedly African, L. American or Asian derivation [21]." The present liberal notion of human rights is euro-centric, narrow, dogmatic and abhorrent of non-liberal lives. Hence it stands in need of urgent revision. True universality is a never ending process, involving all cultures. Evolution of our own indigenous perspective of human rights generic to our social-cultural milieu requires that the concept be presented in such a way that it strikes a chord in peoples' heart, that it relates to local cultures and that it addresses the concerns of local communities. There is need to preserve the best and most distinctive features of all cultures and value system and jettison the most repugnant when making changes required for compliance with human rights. Mankind is in urgent need of a notion of human Rights which is dynamic, responsive and truly universal.

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