

## Universality of Human Rights: Myth or a Reality?

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**ABSTRACT:** From the historical evolution of human rights, all rights are universal, indivisible, interrelated and interdependent. The theories of human rights basically expound that human rights should universally apply to all citizens without any discrimination and not subject to any qualification before its application. This work will appraise the existing legal and institutional framework to identify the areas they have fared well in enshrining and entrenching this universality principle. This paper will settle the controversies on the universality and the promotion of distinctive perceptions of human rights with a view to identifying the myth or reality of the concept of universality of human rights. This work will also identify the controversies surrounding the universality principle which are the gaps it seek to fill and make recommendation for the systematic entrenchment of the universality principle. In doing so, this work will use the 'philosophical', 'State's response' and 'cultural' approaches to settle this controversy. This work will show that universality of human rights is not a myth but exists in reality even though not in absolute sense. It is hoped that these recommendations will lead to the entrenchment of the legal framework of the universality concept of human rights in various jurisdictions that lack it with a view to enhancing the human rights jurisprudence.

**KEYWORDS:** Human rights, universality, mutable, cultural identities and ideologies and Eurocentric.

### I. INTRODUCTION

There is no generally accepted definition of human rights but the definition by Umozurike is comprehensive and best suits the essence of this work. He defined Human rights as '...claims which are invariably supported by ethics and which should be supported by law, made on society, especially on its official managers, by individuals or groups on the basis of their humanity. They apply regardless of race, colour, sex or other distinctions and may not be withdrawn or denied by governments, people or individuals...They are also those rights which every individual claims and aspire to enjoy irrespective of his colour, race, religion, status in life etc'.<sup>1</sup> The concept 'Universality' is the noun form of the word 'universal' which means involving all people in the world or in a particular group.<sup>2</sup> The concept of universality of human rights postulates that 'human rights belong to all human beings, to every woman, man and child wherever they live on earth. No individual, group, country or religion in the world should be denied the enjoyment of human rights'.<sup>3</sup> In essence, human rights inhere in every human being by virtue of the fact that he is human. Human rights apply to all human beings without any discrimination, and respect no boundaries or State origins. This informed the assertion by some legal authors that 'Human rights principles are the same everywhere, irrespective of sex, race or creed. That means that human rights are applicable in every society and association of human beings...it is on this premise that human rights are superior to positive laws, which a state could change at will or administer according to circumstance peculiar to its society. But when it comes to human rights, no society or state can alter it since they represent those essential qualities that are common to all men or human beings'.<sup>4</sup>

### II. LEGAL AND INSTITUTIONAL FRAMEWORK

Human rights are universal and have gained the support of various human rights instruments.<sup>5</sup> These instruments speak in universal terms by the use of all inclusive words such as "Everyone" or "All" or "No one" and does not

1. Umozurike, U.O; *The African Charter on Human and Peoples' Rights*, London, Martinus Nijhoff Publishers, 1997, 5.
2. Hornby, A.S; *Oxford Advanced Learner's Dictionary of Current English*, 7<sup>th</sup> ed., U.K., Oxford University Press, 2000), 1614.
3. Lalumiere, C; *Human Rights at Dawn of the 21<sup>st</sup> Century*, Strasbourg, Council of Europe, 1993, 7. See UNGA Resolution 32/130 of 16<sup>th</sup> December 1977, par 3.
4. Ndubuisi, F.N. and Nathaniel, O.C; *Issues in Jurisprudence and Principles of Human Rights*, Lagos, Dmodus Publishers, 2002, 181.
5. Omar, S and Ahmed, F; 'Universal protection of Human Rights: A Cross Cultural Perspective', *The Journal of Technology and Entrepreneurship in Africa*, (Vol. 2, No. 1, 2010), 312.

in any way exclude any human being from the full enjoyment of his rights. The Universal Declaration of Human Rights affirmed the universal recognition of the inherent dignity, equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.<sup>6</sup> The continuing impact of the Declaration and the use made of it bears out its universal acceptance as a common reference for human rights for all nation.<sup>7</sup> The violation of human rights orchestrated in the World War I led to the birthing of the Universal Declaration of Human Rights 1948. After the adoption of the Universal Declaration of Human Rights, it was replicated through regional instruments of the world.<sup>8</sup> It is recalled that individuals, groups and nations were discriminated at the time of the adoption of the Universal Declaration of Human Rights which affirms “race, colour, sex, national or social origin, birth status” as non-basis for discrimination.<sup>9</sup> That is why there are articulations of special rights in special instruments that emphasizes on the enjoyment of the rights accruable to vulnerable groups on equal basis. The vulnerable groups include the Women,<sup>10</sup> Children,<sup>11</sup> Persons with Disabilities,<sup>12</sup> Refugees,<sup>13</sup> Minorities,<sup>14</sup> Prisoners,<sup>15</sup> Indigenous people<sup>16</sup> and Migrant Workers<sup>17</sup>.

The institutional framework for the universal protection of human rights are internationally and regionally based. With the exception of slavery, protection of human rights from the 20th century now belongs to the domestic jurisdiction of each State.<sup>18</sup> However, there are UN charter based, treaty based, regional based and other specific based organs for the protection of human rights. They are the Human Rights Council,<sup>19</sup> the Human Rights Committee,<sup>20</sup> Economic and Social Council,<sup>21</sup> Council of Europe, Organization of American States, African Union,<sup>22</sup> the Committee on the Rights of the Child,<sup>23</sup> the Committee on the Rights of Persons with Disabilities,<sup>24</sup> Committee on Protection of the Rights of Migrant Workers and Members of their

6. See The Magna Carta, 1215; The United Nations Charter, 1945; Universal Declaration of Human Rights 1948, arts 1, 2, 3 and 6; International Covenant for Civil and Political Rights 1966; and International Covenant for Social, Economic and Cultural Rights 1966 and the II Optional Protocols.
7. See the Universal Declaration of Human Rights 1948, the Preamble.
8. Ladan, M.T; “International Human Rights Law: Development Scope and Enforcement/Monitoring” in Obilade, A.O. and Nwankwo, C and Tunde-Olowu, A (ed.); *Text for Human Rights Teaching in Schools*, Lagos, CRP, July 1999, 66.
9. Jha, D.N; ‘The Myth of Universality of Human Rights’, January 9, 2022, <https://www.dailypioneer.com/2022/state-editions/the-myth-of-universality-of-human-rights.html>; accessed 10-3-2023. See the European Convention on Human Rights 1950, the American Convention on Human Rights 1978 and the African Charter on Human and Peoples’ Rights 1981.
10. Atsenuwa, A; “Human Rights Protection of Vulnerable and Marginalized Groups” in Obilade, A.O. and Nwankwo, C and A Tunde-Olowu (eds.), *Text for Human Rights Teaching in Schools, op. cit.*, 210. See the Convention on the Elimination of All Forms of Discrimination Against Women 1979.
11. See the Convention on the Rights of the Child 1990.
12. See the Convention on the Rights of Persons with Disabilities 2008.
13. See the Refugee Convention 1951 and its Optional Protocol of 1967.
14. See the United Nations Minorities Declaration 1992.
15. See the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987, European Convention for the prevention of torture and Inhuman or Degrading Treatment or Punishment 1987 and 3<sup>rd</sup> Geneva Convention on Prisoners of War 1949. See Buergenthal, T; *International Human Rights in a Nutshell*, 2<sup>nd</sup> ed., Minnesota, West Publishing Co., 1995, 21.
16. See the Universal Declaration on the Rights of Indigenous Peoples, 2007.
17. See the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, 1990.
18. This is a fall out of ratification and domestication of international human rights regimes as seen in the Constitutions of Countries like Nigeria, Kenya and South Africa
19. See the Universal Declaration of Human Rights, 1948; art 28.
20. This is the United Nations Chartered based organ specifying confidential procedure for examination of communications and special procedures. It succeeded the United Nations Commission on Human Rights. See International Covenant for Civil and Political Rights 1966, art 28. ;
21. See the International Covenant for Social, Economic and Cultural Rights, 1966; art 17.
22. It replaced the former Organization of African Unity.
23. See the Convention on the Rights of the Child, 1990; art 43.
24. See the Convention on the Rights of Persons with Disabilities, 2008; art 34.

Families,<sup>25</sup> Committee on Elimination of Discrimination against Women,<sup>26</sup> Committee against Torture<sup>27</sup> etc.

### III. UNIVERSALITY OF HUMAN RIGHTS: MYTH OR REALITY

Having understood the concept of universality of human rights, the pertinent questions to answer here are (i) Does the mere proclamation of the Universal Declaration of Human Rights for the whole world confirm the universal subscription or observance of its ideals and standards? (ii) Does the UDHR proclamation of “a common standard of realization for all people and all nations” translate to same in reality? How universal are human rights in reality? Are the application and enjoyment of human rights varied by regional, religious, cultural or political backgrounds? However, the indices for measuring the universality of human rights or otherwise are in its proclamation/subscription in various Constitutions of Countries, realization, enjoyment and enforcement on an equal basis. To answer these questions, this work will settle the arguments over the universality of human rights using three (3) approaches namely philosophical, State’s response and cultural approaches.

**Philosophical approach** – The universality principle was first introduced under the philosophies of human rights. The concept of human rights has its philosophical ancestry in the natural law school<sup>28</sup> which its objective moral principles depend upon nature of the universe which can be discovered by reason.<sup>29</sup> Its foremost formulators were the Philosophers of Stoic school. To them, natural law was universal because it applied, not only to citizens of certain States but rather to everybody everywhere in the metropolis and that the most important thing that unites all men and makes them equal is capacity to reason, given to them by nature or the creator (independent of any man made enactment).<sup>30</sup> The natural law doctrine however faced violent opposition which culminated in its revival in the 20th century leading to the creation and operation of United Nations Organization (UNO) and its various Declarations and Conventions relating to Human Rights.<sup>31</sup> This led to positive law theory which states that individuals enjoy rights as the State permits.<sup>32</sup> The positivist are of the view that rights are creation of the State and are neither universal nor inalienable but are simply entitlements by an authority legitimate or not, to members of a society.<sup>33</sup>

The attack of positivist on natural law met its waterloo as their theory was akin to despotism and tyranny.<sup>34</sup> A balance was created in the two schools of thought to arrive at a consensus that both naturalist and positivist approaches to human rights complement each other.<sup>35</sup> In bid to arrive at a better approach to human rights, the sociological law theory posits that rights and freedoms of individuals in any State are materially stipulated and depend on the socio-economic, political and other conditions of the development of the society, its achievement and progress.<sup>36</sup> From the foregoing, the three theories advanced above under the philosophical approach to human rights all support the universality of human rights.

25. See the Committee on Protection of the Rights of All Migrant Workers and Members of their Families, 1990; art72.

26. See the Convention on the Elimination of All Forms of Discrimination Against Women, 1979; art17.

27. See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987; Art17.

28. Cranston, M; *What is Human Rights?*, New York, Taplings Publishers, 1973, 1.

29. Lloyd, D. and Freeman, M.D.A; *Lloyd’s Introduction to Jurisprudence*, 5<sup>th</sup> ed., London, Stevens ELBS, 1985), 229.

30. Ezejiofor, G; “The Development of the Concept of Human Rights: Definition and Philosophical Foundations” in Obilade, A.O. and Nwankwo, C and Tunde-Olowu, A (eds.), *Text for Human Rights Teaching in Schools*, *op.cit*, 1.

31. *Ibid*, 23-24.

32. Okpara, O; *Human Rights Law and Practice in Nigeria*, Vol. 1, Enugu, Chenglo Ltd., 2005), 12.

33. O’Manique, J; ‘Universal and Inalienable Rights: A Search for Foundation’, *Human Rights Quarterly*, Vol. 1, Issue 4, Nov. 1990, 465-485.

34. Ogbu, O.N; *Human Rights Law and Practice in Nigeria: An Introduction*, Enugu, Cidjap Publishers, 1999, 24.

35. *Ibid*.

36. Human rights are never constant but rather vary in accordance with the changes in the social, economic, political and other trajectory of the society. See Kartashkin, V; “The Socialist Countries and Human Rights” in Vasak K (ed.), *The International Dimensions of Human Rights*, Paris, UNESCO, 1982, 631.

**State’s response approach** – This purely refers to the attitude of States (western and non-western society) to specific human rights. It is worthy to note that Louis Henkin is of the view that rights in the Declaration are

politically and legally universal, having been accepted by virtually all the States, incorporated in their own laws and translated into international legal obligations.<sup>37</sup> States having done so, their laws are intended to serve as the common standard of achievement for all people and all nations<sup>38</sup> in bid to secure universal and effective recognition and observance of the rights and freedoms it lists.<sup>39</sup> While the western society gives prominence to civil and political rights while being hesitant about economic, social and cultural rights and to accept the concept of collective rights,<sup>40</sup> the non-western world very often underlines economic, social and cultural rights and speaks about particularity of human rights referring to local contexts,<sup>41</sup> and collective rights inclusive<sup>42</sup>. States do not respect human rights and individual freedoms as legitimate variations exist between various versions of human rights.<sup>43</sup> This is replicated in prioritizing civil and political rights as against socio-cultural rights which is the bane of human existence.<sup>44</sup> A look at the government's stance on socio-economic rights and right to development are relegated to the background and also do not take positive measures to enforce social rights.<sup>45</sup> States are really not interested in respecting or fulfilling human rights but rather seeking for legitimate excuses not to realize its universal application. That is why the Nigerian State can waste nation's resources which ought to be channeled to promotion of socio-economic rights knowing it cannot be challenged to enforce socio-economic rights. This goes to prove that the attitude of the State to its response to the universal protection of human rights is not encouraging. This is an impediment to the universality of human rights. Despite this impediment under reference above, human rights protection is universal despite been limited in the normative sense.<sup>46</sup>

**Cultural approach:** This refers to the subjectivity and arbitrariness of western regions in handling the issues of cultural and religious inclinations and the difficulties they face during implementation of human rights norms. It is worthy to note that Devanshu Jha<sup>47</sup> is of the view that the universality concept is a myth and never existed in context of human rights. He advocated that to unravel this controversy, we need to study the transformation and evolution of human rights as a system conditioned by idiosyncrasies to issues with respect to localized histories, faith and tradition.<sup>48</sup> This his later view appears to be in support of the assertion of Henkin that virtually all societies are also culturally receptive to this basic rights and human needs included in the Universal Declaration that reflect common contemporary moral intuitions while however, other rights (notably freedom of expression,

37. Henkin, L; "The Universality of the Concept of Human Rights", *Human Rights Around the World, Sage Journals*, Vol. 506, Issue1, Los Angeles, Sage Publications, Inc., Nov. 1989), 10-16; <https://www.jstor.org/stable/1046650>, accessed on 10-3-2023. States referred to here are Member States of UN that have agreed they have an obligation under the Charter to promote universal respect for and observance of the rights which the declaration proclaims. See Igwe, O.W; *Preliminary Studies in Human Rights Law*, Lagos, Rings and Favolit Ltd., 2002, 57-58. See also the United Nations Charter, 1945; art30.

38. See the Universal Declaration of Human Rights 1948, the Preamble.

39. The threats of the human rights as declared by the Treaties and even at regional levels is to ensure that Human rights of every human being is respected and upheld whenever he or she may be in the world. See Obiagwu, C.E; "International Human Rights Framework: A Challenge to Nigerian Courts" in Nweze, C.C. and Nwankwo, O (ed), *Current Themes in the Domestication of Human Rights Norms*, Enugu, Fourth Dimension Publishing Co., Ltd., 2003, 54. Human rights is universal but limited to a small group of minimum essential rights, usually essential to human society which are rights to life, fair treatment, fellowship, freedom from arbitrary interference, of honourable conduct, of civility and of child welfare.

40. Kang, H; 'The Universality of Human Rights', *INTERNATIONAL LAW*, 2022; <https://www.graduateinstitute.ch/communications/news/universality-human-rights>, accessed on 13-3-2023

41. *Ibid.*

42. Emphasis is mine. Collective rights include right to self determination and right to self development.

43. Rehman, J; *International Human Rights Law*, 2<sup>nd</sup> ed., England, Pearson Education Ltd., 2003, 9.

44. *Ibid.* The prioritized rights are the most fundamental of human rights from which no derogation are possible.

45. See the Constitution of the Federal Republic of Nigeria, 1979 as amended. While chapter II guarantees the 'social, economic and cultural rights' as fundamental objectives of Government policy and are non-justiceable, the rest of the 'civil and political rights' are guaranteed as fundamental rights under chapter IV which are justiceable.

46. Kang, H; *The Universality of Human Rights*, *op. cit.*

47. Jha, D; 'The Myth of Universality of Human Rights', *op. cit.*

48. *Ibid.*

religious and ethnic equality, and the equality of women) continue to meet deep resistance.<sup>49</sup> That is why this view of Louis Henkin is supported by Rehman when he advocated that despite the universal declaration of

human rights there ought to be the establishment of distinct systems so that in the event of conflict on modern norms of human rights law and the distinctive systems, the latter should be accorded primacy.<sup>50</sup> From the foregoing, we must admit that there are multiple human rights cultures across the globe even though down played by the western society. Generally, human rights is conceptualized and based on Western European notions of rights with corresponding duties and natural laws.<sup>51</sup> Certain degree of subjectivity and arbitrariness are reflected in the attitude of western society towards non-western world in judging human rights assessment without taking into consideration the local contexts of the targeted countries and the difficulties they face during implementation of human rights norms.<sup>52</sup> This is one of the reasons that inhibits the acceptance of the universality of human rights, hence this argument. That is why developing countries are of the view that international human rights regime is Eurocentric<sup>53</sup> and does not treat them fairly because whenever universality of human rights is talked of, people always refer to “Asian”, “African”, “Islam” etc. but never “European or American way”. This they do without much ado to the fact that the concept was originally created in the west and spread to other regions in the world thereafter. In the course of the expansion, its original features were consequently reshaped by local culture and context where it spread. That is why human rights today are perceived differently in different regions. While the western society has stepped into the era of post modernization, developing countries have are still in the process of modernization. Despite the argument in favour of cultural relativism, no one would agree to be tortured as part of his cultural heritage. That is why particularities in human rights should not be invoked as a justification for human rights violations. There are dehumanizing practices which expose citizens to danger and negate the very essence of their existence.<sup>54</sup> It is also against the law of the land as citizens have not attained the age of majority requiring them to fend for themselves and to take decisions on their own. Notably, Saudi Arabia absented from UN Declaration because equality in marriage was seen as against their Islamic religion.<sup>55</sup> However, modern human rights norms have been embraced by other developed Islamic States who have advanced their human rights to the extent that one can opt to be bound by the culture and cannot be forced.<sup>56</sup>

From the approaches considered above, it reveals that there are pockets of disagreement that conflict over general acceptability of the universal application of human rights on equal basis. These conflicting views are the major reasons for the problems encountered in various States in the universal approaches to protection and promotion of human rights.

#### IV. RECOMMENDATIONS

**Continuous human rights education/cultural sensitization for States** - This is needed to sensitize and re-orient some States that deliberately create a false dichotomy between ‘civil and political rights’ and ‘social,

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49. each other. This is key to the actualization of a universal promotion and protection of human rights. L Henkin, *The Universality of the Concept of Human Rights*, *op. cit.*

50. These distinct systems like the Islamic states have advanced their standard of human rights. See Rehman, J; *International Human Rights Law*, *op.cit.*, 8.

51. Kang, H; *op.cit.*

52. This made the proponents of cultural relativism to state that human rights as presently conceptualized was developed mainly in a western context and therefore not universal. See Manguarella, P.J; ‘Questioning the Universality of Human Rights’ in *Human Rights and Human Welfare*, Vol.3, Issue 1, Art6, Jan 2003, 16.

53. Eurocentric implies a way of thinking; an assumption that what is universal is something western, and that non-western things are particular.

54. The Almajiri practice of the Northern Nigeria exposing children as young as four (4) years who are handed over to the Imams who let them roam the streets to beg for their daily bread bare footed. Another obnoxious aspect is marrying off the little girls which expose them to health challenges of developing VVF. See Onuigbo, F; ‘She’s my Choice, I Married her Because We Love Each Other – Kano Alhaji Marries 11 years Old Girl’, <https://www.gistamania.com/talk/topic,5576300.html>; accessed on 15-3-2023.

55. They are of the view that the Universal Declaration’s call for freedom of religion violated the precepts of Islam, and that the human rights guaranteed by the Islamic-based law of Saudi Arabia surpassed those secured by the Universal Declaration. See Turak, N; ‘Saudi Arabia Loses Vote to Stay on UN Human Rights Council; China, Russia and Cuba Win Seats’, October 14, 2020; See <http://www.cnn.com/amp/2020/10/14/saudi-arabia-loses-vote-for-un-human-rights-council-china-russia-win.html>.

56. See the Islamic State of Egypt.  
economic and cultural rights’ complement

**Change in perception and attitude of States** – The developing States should grapple with the fact that the law is dynamic and developing and the peculiarities of their religion, culture and perception of primordial (preference) rights cannot remain static. The influence of developed Countries and inter-relations would always lead to a better version and protection of human rights norms. The mutable nature of Human Rights laws makes it imperative that it is liable to be assessed and modified from time to time in order to be adapted to new realities of social life. Therefore, the States should change and re-shape their perception that human rights norms are Eurocentric and be optimistic that it can achieve human rights of universal application. They should also change their attitudes toward prioritizing of certain rights above others as all rights complement each other. While Nigeria and Kenya in their Constitutions gave political rights priority over economic, social and cultural rights, South Africa did not give any preference over each other. Both rights complement each other and are embodied as justiceable rights in their Constitution.

**Harnessing and Integration of cultural diversities in human rights international framework** - What is required here is for United Nations to identify, collate and integrate various cultural identities and ideologies with regards to human rights in the various international Human rights instruments. This will bring about the fusion of cultural identities and ideologies to form a universal basis for human rights observance with insignificant differences. In doing this, it must set a standard to condemn cultural identities and ideologies that negative the protection and promotion of human rights.

## **V. CONCLUSION**

Universality of human rights exists in reality even though not in absolute sense. However, its reality has been forestalled by the divisive approaches on human rights. Despite the divisive approaches, the universality of human rights has been made contingent on the ‘States’ response’ and ‘cultural approaches’ with the attendant and palpable constraints on its enjoyment on equal basis. It does not remove the fact that the principles of human rights ought to universally apply to all on the very fact of being a human being. The fact remains that due to these divisive approaches analyzed above, the universality of human rights appear to have been relegated to a mere declaration to be attained in future which every human being must claim as of right and which States have a corresponding obligation to promote. For now, the universality of human rights remains a myth. Since human rights are mutable, they are susceptible to modifications and adaptations over time in order to fit into dynamic social changes. It will take patience alongside the systematic implementation of the recommendations enlisted above for the development of the concept of universality of human rights into reality and to be sustained for future generations.