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CULTURAL RELATIVISM

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Abstract

In the field of international human rights law, the term "cultural relativism" often appears in the academic and practical fields, and has gained theoretical and practical development in western countries and the third world. This paper will further discuss it in combination with cases.

Keywords

International human rights; Cultural relativism.

1. Introduction

Most literary analysis asserts that the essence of morality in us humans is relative to the culture we emanate from and that it varied depending on the cultural norms. Fernando Tesón contends that "A central tenet of relativism is that no transboundary legal or moral standards exist against which human rights practices may be judged acceptable or unacceptable. Thus, relativists claim that substantive human rights standards vary among different cultures and necessarily reflect national idiosyncrasies. What may be regarded as a human rights violation in one society may properly be considered lawful in another, and Western ideas of human rights should not be imposed upon Third World societies." The assertion, however, is a rough ideology of what cultural relativism portends. Cultural relativism is a theory with the ability to take many tangents upon which it may connote a scientific approach to some people while it illustrates a postmodern form to others. As such, it is not a surprise that the theory of cultural relativism is embedded into multidisciplinary dimensions. When viewed from the aspect of international laws on human rights, it is established that the idea of law absolutism is fallacious.

2. The Universality of Human Rights and Cultural Relativism

Human rights are universal, and hence they became the main principle in the International Human rights Law (IHRL), and it asserted that every individual enjoys the specific rights as declared in Universal Declaration of Human Rights (UDHR). This, however, became a problem since Universality of rights came with a lot of defects which were highlighted adequately by the American Anthropological Association- AAA (1947) showing that standards and values of human rights are relative to the culture from which they are derived from.

Later Universalism of rights was perceived to be intolerant and inconsiderate of all cultural aspects that fail fit into the set universal principles. Asian governments and their intellectuals challenged the universality of the principles of human rights and insisted that there was a distinctively Asian conception of human rights, and it differed with the set universal principles. Similar problems were raised by some African scholars (M. Mutua, Human Rights: A Political and Cultural Critique (University Of Pennsylvania Press, 2008).)

Relativists contend that there is universally no correct way to determine what is valid and what is not. They suggest that different cultures value common good distinctively, and each of the cultures have the rights and freedoms to live and acts based on their history and culture. Therefore, the standards of human rights vary in relations to human cultures and national

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idiosyncrasies. This argument puts in context Fernando Teson's (Teson, F. R. (1984). International Human Rights and Cultural Relativism. *Va. j. Int'l L.*, *25*, 869.) The assertion that human rights practices are relative and can only be judged as acceptable or not, only in the context of cultural beliefs, values, norms, and practices. What may seem like a human right practice to one may be regarded as a violation of another. This state of shifts illustrates that to some extent, cultural relativism might be compatible with human rights practices and laws. According to these assertions, it is therefore agreeable to me that human rights are as diverse as cultural practices. The acceptability of cultural relativism and human rights are both contextual. They are not universally valid to some extent, but they can be authentic to specific cultures or group of people. For instance, in the case of Franz Boas, he critically opposes the prevailing theories that some cultures are developed and others are primitive. Relativist's thesis believes that even if international laws exist, the meaning and perception of human rights will still vary significantly from culture to culture. Boas, therefore, introduced the aspect of respect and tolerance when it comes to cultural diversity, an aspect which even those in human rights movements came to support.

The theory of cultural relativism is popular among human right advocates because it projects a valid ideology that, everyone is equally entitled to respect and tolerance. This idea became popular because it argued that cultures are partly tied to a person's identity. This means that these cultures in their diversity dominantly define what is humanly right and what is regarded as a violation of individual cultures. Therefore because of this issue of cultural diversity, it is morally difficult to devise effective universal rights. The idea that that is premised on the universality of human rights pits the factor of linguistics to be a condition of necessity (J. Donnelly, 'The Relative Universality of Human Rights', (2007) 29(2) Human Rights Quarterly 281 – 306 at 290; M. Goodale, Surrendering to Utopia: An Anthropology of Human Rights (Stanford University Press, 2009) 43, 131.) Some argue that the IHRL makes cultural presumptions about human rights that are not indeed universal. The following case study is an example of how cultural relativism affects the world view on human rights.

3. Weaknesses of Cultural Relativism

Although cultural relativism is liberating and openly acknowledges owed respect to different cultures on how they handle human rights, the theory fails to challenge also what is morally misleading. Its argument encourages its proponents to tolerate dysfunctional, inhumane, cruel, and unjust cultures. Consequently, the arguments of this theory provide little protection to cultures that aim to destroy others. Therefore the claim that each society has a right to justify its uniqueness to human rights and self-determination renders the theory almost implausible. A case of this happened in Germany, where Nazism was a product of German history and self-determination. This is a challenge that the ideology of cultural relativism cannot solve, but universal policies were able to. Cultural relativism, therefore, raised a discord on the philosophical foundations of on the perception and laws that govern human rights. The universality proposed by Human rights is aimed to be equal irrespective of ethnicity. The validity of human rights, therefore, should be accorded on merits and not on the origin.

Case:

4. "ECHR, Dahlab v. Switzerland (Dec.), no. 42393/98"

The "Dahlab v. Switzerland," presented before the European Courts of Human Rights in the year 2001 (Dahlab v. Switzerland, 2001, ECHR, no. 42393/98) (Minority Rights Group. (2019). Dahlab v. Switzerland - Minority Rights Group. [online] Available at: https: // minorityrights.org/ law-and-legal-cases/ dahlab-v-switzerland-2/ [Accessed 20 May 2019]) by an educator in one of the public school based in Switzerland. The school had restricted the veil,

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has confirmed that its utilization might need to affect kids among 4 and eight years old. Additionally, the restriction was dualistic as a reason for maintaining the school's orientation on neutrality and avoidance of bias. For this situation the texture data or "directions" have been in this way the consequent: first, the candidate turned into an essential school educator, and in light of this account for understudies we identify the issues invigorated because of their progressive nature of the case determination. The teacher worked with passion and was a role model for the student. Furthermore, she taught in a government-funded school which, in essence, with the choices of the national courts, made her somewhat an "advisor of the territory." Thirdly, and firmly identified with the former point, the shroud move towards becoming viewed as a conspicuous rendition of religious conviction forced on exceptionally more youthful students. In the end, the utilization of the veil had not the slightest bit explained objection by methods or the ways it influenced the children, parents, and or other teachers in the vicinity of the school.

The European Courts of Human Rights became locked with the applicant's claim which was a counter to the move of the Swiss nation, following dismissal both by the authorities that governed the education sector in the country and the government by the use of courts proceedings. The European Courts of Human Rights established that the case stressed the points of confinement of the petitioner's human rights (the statute of profound lack of bias in government-funded instruction, the guideline of balance and non-segregation at the grounds of sex that each instructor must convey in the all-inclusive in general execution in their expert commitments). The European court weighed several factors on the case and decided that it did not provide sufficient grounds for the claim(this is in any event astonishing, given the substance material of the decision), dismissing the contention that educators, as agents of the representative state, have a specific splendid commitment of profound nonpartisanship. During the time that Dahlab spent pursuing her case, she was prohibited from wearing the veil in the school's premises because "the wearing of a veil may more than likely have some influence" to the young children that she was teaching. From this edge, the ECHR's assessment can be acclaimed, in the revel in that the measure went with is authentic, because of the reality there was an adequate assessment of its objective and ampleness – its need and proportionality strict sense. Notwithstanding the truth that, the ECHR's decision should have rejected the application, rather than contemplating that it was unacceptable.

5. Analysis of the Case

The application brought before the judges in the court restricted the wearing of the head veil for the Islamic religion, also called the Hijab. It should be noted that the applicant did not invoke any complaints from the teachers, parents, and pupils. At this juncture, it is possible to identify that key issues such as cultural relativism is embedded in this case study and might bring infringement of human rights depending on the context. The fact is that the Swiss court founder the application as inadmissible, therefore it is possible to argue that the lady did not get justice. While looking at it from a different angle, one cannot help but notice that the wearing of the veil was argued to be unlawful according to the laws of the Swiss nation.

The ruling of the case was based on the following three fundamental jurisprudence that connotes how diverse cultural relativism is on the global scale:

The court perceived the Hijab as a sort of representation that had power on how people and especially the children and the way it affects their freedom and conscience (v Switzerland, D., 2001. Application No. 42393/98. The decision of the European Court of Human Rights of, 15)

The wearing of the veil was also interpreted as a dilemma on the aspect of gender equality given that for some people it "might have some proselytizing effect (v Switzerland, D., 2001. Application No. 42393/98. The decision of the European Court of Human Rights of, 15.)

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Finally, the European Courts of Human Rights established that there was contention on how the various aspects of culture such as wearing of the Hijab could be reconciled with the messages of tolerance and respect to other people's religious in an area that spans multicultural orientations. (v Switzerland, D., 2001. Application No 42393/98. The decision of the European Court of Human Rights of, 15)

The principle of cultural relativism, as elucidated through the above case study is that it knows no right or wrong. Instead, it seeks to serve the context of cultural imposition that falls within its geographic and categorical positions. Arguably, one can say that the laws inferred by the European court of human rights were compromised. When certain laws take a dominant position, then it becomes difficult to win cases that require cultural orientation (Kathrani, P. (2012). Quality circles and human rights: tackling the universalism and cultural relativism divide. AI & society, 27(3), 369-375). The principle of the dominant position does not entirely state that the possibility any law breaches, however, if the principle uses the governing authority to undermine the others, it is categorically defined as unlawful and thus goes against the established laws. The European Courts of Human Rights argued that its only mandate was to provide a genuine jurisdiction in detailing such a highly publicized case that concerns two different cultures under different laws. Therefore, it may be possible to assert that there might have been abuse of dominant position was defined in the case of Dahlab v. Switzerland, there is an elucidated a feeling that was counteractive to the proponents of cultural relativism as the court maintained its absolutism on how the law spelt through its advocates and other members of the jury.

6. The Court Decision

The decision of the court on matters of human rights should readily contain provisions for what aggregates the exploitation of dominant roles, and it consists of, expending related circumstances to equality, the rule of law and a fair hearing. As such, the imperatives of cultural relativism is pegged on the idea laws should consider culture and context. Additionally, the aspect of morality forms a delicate balance on the low. Therefore, viewing Dhalab Vs. Swiss case one cannot help but conclude that the court did not act as per any moral codes.

It has been superficially challenging to come up with one universal law that entails the imperatives of human rights. The science of legislation of a universal law that summarizes the normative aspects needed to be followed marred with severe issues of ambiguities. The above can be viewed under the lens of Jeremy Bentham's principle of Utilitarianism, which fits in the positivist notion. This is a school of thought that links the needs of human beings such as culture and things that they do to avoid pain and maximize pleasure. In line with Bentham, the science of legislation is grounded on the universal principle of utmost good to the majority of the people in the society. As such, legislators in the global standpoint need to be founded on the motion that supports maximum benefits to all, which necessitates the legislator to eliminate some of the barriers that inhibit the interaction of people from all divides and existing in the harmonious pattern even within the confines of the laws.

The principles that entwine the scheme of human rights and cultural relativism can be understood by a glimpse of Victor Frank's work on human beings using his logotherapy theory.

The principal believes that people are stimulated by way of 'will to meaning' and seeks to boost three primary standards within human life, culture, and the will and passion for existing. The foundation of cultural relativism connects well with this school of thought mainly because it is about finding a balance and harmony in the different cultures that exist around the world. The fundamentals of this school of thought argue that the lack of meaning in life creates psychological disturbances. The theory is based on three principles

Every individual is embedded with a healthy core

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The focal focus of individuals is to provide knowledge that helps people to appreciate themselves and others as part of the journey of coexisting.

Sometimes the purpose of life simply exists with people and that there is no promise that one will be happy or will achieve a sense of fulfillment

To find meaning as encoded in cultural relativism, there are three distinct ways; by working, having experience or an encounter with something or someone and by developing attitudes towards unavoidable suffering. This theory assumes six assumptions;

Body, mind, and spirit. States that our spirit defines us apart from our body and mind.

Meaning of life. The human life is not in vain and has a purpose attached to it hence the sanctity of human rights laws.

Will to meaning. Meaning to humans is the primary motivation for living and acting. It enables us to endure pain and suffering.

The choice to charter on meaning and interpretation of culture and life. That human beings have the freedom of choosing meaningful choices in life even when they are suffering.

The uniqueness of individuals is irreplaceable.

Context and meaning of the moment is a key pattern into demystifying the patterns of cultural relativism.

Franki cites that given the right conditions people have the power to turn their suffering into achievements. The theory, when analyzed with proximity with the laws engineered to help people deal with difficult condition and paradoxes that ensure, for instance the problems emanated by cultural relativism (Frankl, V. E. (2014). The will to meaning: Foundations and applications of logotherapy. Penguin).

7. Behaviorism Theory and Cultural Relativism

The basic foundation of the theory is that the experiences and of human nature and their cultures are reflective of their human conditioning and their background context. Therefore, people are more likely to respond to issues with a close relationship with their environment and hence, the diversity of cultural relativism.

Although cultural relativism is attuned to human rights, the purpose of its application laws can be said to be double-edged as a means to ensure that there is a balance that seeks to promote human welfare. In the context where the rule of law is said to prevail, the laws on human rights are expected to enhance justice, equality, and freedom for human living. This is done by preventing underhand laws practices in the legislation of the laws. The fairer the world is, the greater it's a positive impact on the freedom and the exercise of human life for better and improved living conditions. Cultural relativists hold that values are the product of socialization of power (Perry, M. J. (1997). Are Human Rights Universal-The Relativist Challenge and Related Matters. Hum. Rts. Q., 19, 461). While this assertion holds some truth to it, it is evident that the free working lawful system encourages fair human thriving enhanced by true law that is in place to prevent abuse of universal rights.

8. Conclusion

In conclusion, the preceding analysis supported with the case study is illustrative of how failed cultural relativism since it does not save or justify a situation. For instance, the case study used in this paper shows a teacher who is sacked simply because the veil is a symbolic representation of external culture. Culture, on its own, is a product of man, upon which he identifies himself with. The above-chosen Jurisdictions given by the European court when it comes to the proceedings of the case have dramatically changed how laws and legislations all over the world

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perceive and interpret culture and its association with the laws hence the cultural relativism thought.

Moreover, the universal laws, especially those that centers on human rights are laced with an outward reach and the global stakeholders and onlookers are deemed to interpret such laws regardless of the context (relativism) and the details that are in exchange. In such retrospective, the said states become pioneers when it comes to the aspects of cultural relativism and how they influence human rights and law matters. Additionally, the delicate balance between morality and the principles of the laws brings out the various precepts that reflect on how audible the moral and legal judgment can become.

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