

RETHINKING: PHILOSOPHICAL FOUNDATION OF HUMAN RIGHT

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Abstract. Human rights are grand political philosophy of the modern times which have transcended national boundaries to become aspiration of humankind. Centred upon moral belief propelled on metaphysical moral assumption with its origin in Christianity pity and Enlightenment discourse, however, human rights have become a sort of moral imperialism of our time which exclude and include humanity on the basis of coloniality of power. The combination of emotional/moral appeal and lack of conceptual clarity makes human rights immensely effective as a rhetorical tool and serve as a moral apparatus for humanitarian intervention into the third world countries. Both, the just war tradition and those who theorize the ethics of the law of armed conflict have taken moral and political reality of human rights seriously. Taking anti-foundational approach by challenging its main elements such as ‘universality’ and ‘morality’ this paper would argue that moral premises of human rights is flawed.

Keywords: *human rights, moral, humanitarian, just war*

Introduction

Immanuel Kant (Feinberg, 2014) once wrote, “*benevolently motivated actions do good, and therefore are better than malevolently motivated actions but no action can have supreme kind of moral worth-unless its whole motivating power derives from thought that it is required by duty*”. In context of human rights significance of Kantian thought lies in its highlighting two important aspect- motive and duty. Based on Kantian line of thought, Western powers cites human rights as their ‘moral and noble duty’ to intervene in human affairs of tragedies (or so called just war) often framing incidences of War, poverty, terrorism, natural disaster, ethnic cleanings into their interest.

In human rights discourse, there are several unproven first principle such as, common humanness as a moral quality is one of them; “*this common humanness constitutes of normative framework of human rights expressed through rights (Quijiano, 2007)*”. This is where deductivist in human rights philosophy has anchored their basis of legitimacy -the linchpin upon which every other part of the human rights system is based.

Philosophical thinkers such as Francis Bacon and Jeremy Bentham do not recognize form of proof that justifies human rights. Bentham reject the possibility of natural law. In addition, Richard Rorty (1993) is critical to Kant who has separated moral from sentiments, creating set of non-humans in different period of times which he has classified as Black, Women, Muslims and Queer. These categories (susceptible to discrimination) formulated by the West- through the formwork of human rights, like religion, have arranged people in a hierarchy of superiority. Where Whites are portrayed as smart and intelligent, on the other hand, third world people are framed as corrupt and lazy.

Questioning the foundational weakness of human rights discourse, Douzinas (2000) believe “*rationalism of rights makes their formulations so abstract and general as to render them unreal and unrealizable.*” For Douzinas (2007), the man of rights- whom

Michael Ignatieff has considered 'one species'—is an abstraction because human in 'human rights' is empty of -history, desires or needs, nevertheless, a human cannot be rid of their essential identities, from their human essences. However, for Allen Buchanan (Sutch, 2011) human rights are not abstract philosophical principles but institutionally embedded norms.

Nevertheless, some scholars believe moral basis of human rights foundations has helped organising and spreading the discourse of human rights universally. Hunt (2007) believe that dehumanizing crimes, such as torture only became conceivable through human rights; furthermore, Hunt believe that human rights are our only commonly shared bulwark against evils. Similarly, Moyn (2010) has noted that "*human rights appeal to morality and natural rights transcend to nations states and boundaries...morality provided human rights a kind of timelessness.*" Also, few have argued human rights is moral that's why it has Universal appeal therefore applicable to all cultures (Donnelly, 1984).

Contrastingly, Santos (2002) stresses that human rights are not universal in their application (there are four different sets of human rights regional regime); and rests on a Western centric idea of 'human dignity' and 'liberalism' which is different from other conceptions of human dignity in other cultures thus, metaphysical and moral foundation of human rights is not without flaws.

Nevertheless, liberal peace theorists believe in common humanity which can be served better through democracy and individual rights as Chandler (2004) has noted. However, theory seems distant from reality as we shall see elsewhere in this paper that democracy and human rights have become sort of moral hypocrite tools of West to subjugate to rest of the world.

It is to be noted, Western nations tends to form a morally homogenous identity (as a group) inspired from values driving from renaissance. Clifford Geertz believe that undertones in human rights are European because particular kind of humanity is cast in the accent of group pride (Ignatieff, 2001). Therefore, Western nations connected through morally homogenous identity (so called moral community)-their group pride works in a hegemonic manner- as moral custodians of the World- intervening into the third world country in the name of human rights.

On similar line, Rorty (1993) has argued against the idea of stretching one's modal community beyond one's family, culture or tribe because it is particular to certain culture. Although, Douzinas (2000) emphasizes that "*community of human rights is universal but imaginary therefore universal humanity does not exist empirically and cannot act as a transcendental principal philosophically.*" In addition, Universal moralism and cultural identity express different aspects of human experience, such as, when a state adopts universal human right, it will interpret according to its local moral and legal principles traditions- thus global becomes local.

Interestingly, Ignatieff (2001) refers human rights as the language of a 'moral imperialism' which is just as ruthless and just as self-determined as the colonial rules. Through the moral standard of human rights, West pity on victims of the third world people which makes them civilized, besides, it is also an attitude/perception of the West towards third world people- who are accountable for its misery -which is to be attributed on its sub-standard culture and backwardness.

Moreover, in scathing attack on human rights, Roland Burks (Douzinas, 2000) expresses, "*the rationalism and abstraction of rights turns them into absolute moral principles*". Interestingly, above quoted remarks by Burk is reflected in legally binding

United Nation Conventions which supersede all other treaties any states have. However, point often overlooked, in the world of human rights politics it is the powerful Western states who call the shots since power of coding and interpreting international human rights law (in forms of UN treaties/covenants) is still significantly influenced by West hegemons (Baxi, 2006) in their own interest.

Such examples of Western dominance are reflected in human rights council (HRC) where Saudi Arab (a human rights violator nation in every sense) has been elected (in 2015) in Human rights council with support from Western block. Thus, legally justifying dubious human rights credentials of Saudi Arab has been moralized to the world community.

Another key point is that, 'moral community' of West in pursuit of its 'moralizing mission' through its humanitarian concerns quite often have employed human rights as a tool to economic sanctions and military interventions anchored its argument (to intervene) on moral premises of human rights which is considered natural law. This shows how human rights born in moral transcendence of politics, instead, become political agendas of the West (Moyn, 2010).

However, it is important to realize that West has created images of savages and saviour through the moral framework of human rights picking recipients of their benevolence and wrath (Mutua, 2001). Here savages imply poor people from third world countries and saviour usually the white people from West. The savages-victims-saviors (SVS) construction lays bare some of the hypocrisies of human rights project and questions shallow moral foundation of Western human rights -which strategically-classify humans from non-humans- to whom to rescue and to whom to ignore in case of humanitarian disaster.

Thus, as SVS construction implies, on the part of the West, there is moral obligation to rescue the third world victims, and rescue is based on a feeling of superiority (West as a rescuer) and the principle of substitution (of the third world's victim); nevertheless, this discourse also creates/reify legitimatizing intervening into humanitarian crisis of the third world through the military force (so called peace keeping force), Western media, human rights forums and big financial institutions. In this context, International Commission on Intervention and State Sovereignty (ICISS) report (Chandler, 2004) highlights political, economic, legal and military areas where intervention would be legitimate.

The point often overlooked, is that human right discourse is one of the most terrific hegemons of modern political power structure, is not only a tool to demonize and dehumanize, but also, terrorise those who falls out of the framework of human in the 'human rights'; in contemporary times this include refugees and stateless people who counted out of this moral framework and expelled by humanity (Baxi, 2006). It is important to realize that brutal wars have been-framed through the lenses of 'moral consideration resulted in great loss of human lives; all done in the name of 'morality of protecting human rights' or so called, "moral purposes".

Selective morality of human right

It must be remembered that power to define 'human' of human rights has been prerogative of Western epistemology is not without its problem. There is no final definition of humanity as Douzinas (2007) writes, "*from Aristotle's slaves to 'vermin', 'dogs' 'cockroaches, the boundaries of humanity have been shifting*". These humans were not considered humans thus not also moral; treating them with disgust were not

considered immoral during the certain period. On similar note, Hunt (2007) questions the ambiguities of “man” in the “rights of man.” Fanon (2008; s004) has challenged the hegemonic Western concept of the human and called for a new definition of humanity on the basis of the practices of the colonized. Similarly, Walter Mignolo (2009) pointed out that concepts of ‘man’ and ‘human’ were an invention of European humanists which have served their purposes well.

As a matter of fact, those who are not considered ‘human’ within the framework of Western human rights-their lives have not been considered grieved for (dying refugees in Mediterranean seas); their human dignity is not recognized (prisoners in Guantanamo bay), loss of their lives are not even to mourn for (such as people killed in so called humanitarian war such as Iraq, Syria); those lives lost in West imposed Wars were never grieved, because “*there is no moral worth saving their lives as they were never existed as their lives have never been lived* (Butler, 2009)”. Douzinas (2007) has well noted this irony of human rights discourse “*human’ of human rights is the empirical person who enjoys the ‘rights of man’, is a heterosexual, white, urban male ... whoever is below the standard is not fully up to the status of human therefore their lives do not have moral worth*”.

In fact, Santos (2012) has questioned the exclusionary nature of human rights. He believe that in contemporary times most people are not subject of human rights, rather they are objects of human rights discourse, by NGOs, law books, lawyers etc. Another key point is that, human rights are strongly entwined with citizenship rights thus it excludes some (refuges and stateless people) and privileged few. Thus, important questions surface here is, does those human beings not possess moral worth to be counted in human rights discourse?

Nevertheless, it shall be remembered that, human rights discourse always purports to be morally universal under certain circumstance, may sustain an unequal and unjust set of social and political relationship (Campbell, 2011). Also, in a historical context, human rights shared blame for not effectively challenging the structures of colonialism –particularly its economic order of exploitation of working classes (Rajagopal, 2009). Therefore, theoretically and empirically ‘the discourse of human rights’ remains immoral at the core, thus fundamentally flawed which also have opened a lee way for its misuse resulted in so called ‘humanitarian wars.’

The moral legitimacy of war

In 1970s, global appeal to morality and natural rights helped the human rights discourse become global (Moyn, 2010). The breakthrough for human rights occurred due to humanitarian concern, (particularly for global sufferings such as, genocide in Cambodia, resurgence of ethnic cleansing in 1990s etc), which led the establishment of transnational justice system which has allowed human rights to be an external moral criticism of terrible political regime (Ibid). In addition, global human rights movement in 1980s and the process of “*vernacularization of human rights (grass roots movements)*’ made human rights a tool for moral resistance and a popular site of ‘social struggle’ (Issa Shiva ji)”.

Interestingly, Wars have been invoked in the name of “morally right” actions-actions which have become morally wrong. “*Western humanitarian concern mobilised in political, military and in humanitarian campaigns led the humanitarian Wars unlike, early humanitarianism which did not make distinctions between good and bad wars* (Douzinas, 2007)”. Nevertheless, as History has witnessed; bombing of Iraq, Operation

Desert Fox, ten years of prolonged sanctions, mismanagement of food and medical supplies (in Iraq), have been justified in the name of war -War which claimed to protect the morality of human kind where thousands have been killed, particularly those who were political dissidents in eye of United States.

Let us not forget hypocrisy of the imperial powers such as Britain and France, who, on the one hand, ruthlessly crushed the anti-colonial movements in Kenya, Malaya, Indochina, Indonesia, but on the other hand, were busy in human rights diplomacy in UN (Hpffmann, 2011). Britain's Mau Mau war in Kenya (1952–1956) and the French-Algerian war (1954–1962) are two striking examples. In spite of UN Charter which morally forbade racial discrimination, colonial powers colonized one third of the Earth only to satiate their unquenchable thirst for power, natural resources and domination. Humiliation, disgrace, and exploitation of colonized hardly scrutinized under the purview of human rights discourse.

Nonetheless, it is important to realize, these human rights violations in colonies has become major source of embarrassment to the colonial empires thus attracting strong condemnation in the United Nations from countries with colonial past or still under colonial rule, such as India and Africa, as Klose (Ibid) have stressed. As a matter of fact, the link between Western idea of 'human' and colonality have been well established (Torres, 2017).

However, "*willingness of Western powers to use force for apparently moral purposes has become central feature of the post-Cold war settlement* (Douzinas, 2000)". Kosovo, the first war officially conducted to protect human rights, Tony Blair called it 'just war' promoting the doctrine of intervention while Robin Cook declared that NATO was a 'humanitarian alliance'.

Since 1991, the right to humanitarian intervention has been asserted by governments seeking to justify interventions in Haiti, Somalia, Iraq, Bosnia, and Kosovo. Universal Declaration of Human Rights (hereafter UDHR) also warrant interventions where human rights abuses are flagrant. Three criteria have emerged in 1990s for the reasonableness of military interventions: (1) The human rights abuses have to be gross, systematic, and pervasive, (2) they have to be a threat to international peace and security in the surrounding region, and (3) military intervention has to stand a real chance of putting a stop to the abuses (Ignatifee, 2001). However, in practice, these criteria of 'reasonableness of military interventions' are decided and manipulated (or totally ignored) by the Western human rights powers. Such as, US bombed Iraq without consideration of any of above rules of military intervention. Bombing on Syria by West is another case in this point.

Other examples of double standard of human rights employment

No resolutions in Human rights Council has been passed criticizing Chinese human rights record, simply because China use trade deals to avoid international criticism. United Kingdom sold the fighter plans to the genocidal Indonesian regime of President Suharto were half a million East Timorese were killed. Another key point is, Western nations consider it is rational to justify use of force to protect moral values- driving their inspiration from Kant (Rorty, 1993). Thus, morality of human rights seems justify an aggression or trade sanction in the situation where Western moral values/human rights feel threatened. This moral egotism of West has leads into universalism of human rights into imperialism of its arrogance, consequently resulting in humanitarian wars. As

Moyn (2010) asserted, “with the advancement of human right discourse as international standards human rights have followed a path from morality to politics”.

However, crucial question is, as Douzinas put forward “who authorizes/legitimate to enforce discourse of the universal human rights in the form of humanitarian war/intervention?” For Allen Buchanan international institutions of powers (those who intervene in humanitarian interventions such as United Nations) drive global legitimacy for just war from philosophical and institutional reasoning (Sutch, 2011).

Whatever actions, either the “just war” or trade restrictions- drives from the discourse of Western human rights- a discourse dominated and to the maximum extent constructed by the West. In the modern discourse of human rights- it could be challenging for the subaltern nations (Spivak, 1989) and its people to go against hegemonic West- who are (subaltern nation) more victims of human rights politics than its benefactor.

For the Kantian deontologist, the moral attitude should not be contaminated by specifics of the situation. The moral action is a disinterested response to the demands of the law; moral duty is addressed first and foremost towards the actor and his rational commitment to morality and only secondarily towards the other; nevertheless, it is important to note that point often overlooked- within human rights morality- such as, past colonial atrocities, systematic economic exploitations, subjugation and domination of the third world (Douzinas, 2007).

Since the end of the Cold War political and scholarly debate and state practice has involved a significant renegotiation of the relationship between human rights and the use of force (Sutch, 2011). The liberal-cosmopolitan scholars have defended traditional just war theory, use of force as enshrined in international human rights law. For Allen Buchanan institutional reasoning is central to the justification of human rights norms (\ Sutch, 2011).

Other prominent scholars (Sutch, 2011) justify military interventions in situation of human rights violations because human rights impose some moral constraints on individuals and institutions- morally forces relevant stakeholders to act to protect human rights. In this context, Pogge (1995) approaches to human rights as a “special class of moral concern” which creates moral constraints upon human conduct, practice and institutions, thus, human rights work as a moral imperative to the governments-who must protect the rights of its people.

However, the politics of international law and just war scholars have endorsed but contested the idea of institutional moral reasoning. What institutional moral reasoning can justify? Much of this comes down to the claim that the idea of human rights has become a central constitutive norm of international society-which is doubtful.

In this context, Tasioulas (2003) consider that human rights legitimacy depends upon compliance with independent moral standards, thus international regime of human rights is not self-validating. Similarly, Lawson and Tardelli (2013) term human rights as a purely normative rather than institutional where existence of moral rights does not depend on their political recognition or enforcement but rather on the moral question. Whereas, Buchanan’s assertive liberalism is driven by the claim that the protection of human rights is both the central goal of the international system and that legitimate global governance institutions must have this goal at their core (Sutch, 2011).

Nevertheless, in practice, it must be noted, when it comes to the military intervention- it’s primarily third world countries who are made victims of ‘humanitarian concern’. Moral imperatives, if there is any, shall be equally applicable to the powerful

Western nations who in some cases (in form of economic sanctions, military interventions) under the pretext of the human rights misuse their “moral imperatives” as a leverage against the third World countries, thus, the ‘legitimacy to intervene’ is marred with the hypocrisy of West.

In fact, history of human rights shows in the post war period human rights policies to some extent, have benefited geopolitical interest of the hegemonic capitalist States as Santos (2002) writes, “*the generous and seductive discourse on human rights has allowed for unspeakable atrocities that have been evaluated and dealt with according to revolting double standards*”. Even Universal Declaration of 1948 was drafted without the participation of the majority of the people of the World. Shivji (2020) offer similar thoughts as how unequal power relations in setting human rights standards begets gross inequalities in the world.

Moreover, human rights as a principal of liberation and oppression which once reflected energy of societies have become as become a political weapon, which consequently resulted in violence as never before. On the same note, Jacques Derrida (Douzinas, 2000) lamented over huge gap between theory and practice of human rights which is apparent in growing economic disparity between north and south globally and increasing violence against women, children and refugees.

It is apparent that human rights principles are abstract- a form of absolute moral code- that makes them unrealizable and open to misuse/abuse by the Western powers. Nevertheless, Human rights in its modern legal form may have western origin but innate sense for respect for human dignity have been found in nearly all civilizations in the World thus no particular group of Nation or political group is to license or have hegemony to work as a moral custodian of the World. Selective application of human rights by the West will only erode the moral principles of human rights. However, as Moyn (2010) calls if human rights call to mind a few core values that demand protection, they cannot be all things to all people, the last utopia cannot be a moral one.

Conclusion

The manner human rights are prioritised and employed seriously questions ideological nature and moral premises of human rights discourse. Like all ideological discourses, half-truths and untruths are presented as absolute truths and whole truths (Shiviji, 2020). Therefore, moral premise of human rights cannot and should not go unchallenged as idea of ‘moral human rights’ is inherently grounded in Western centric values, have been applied selectively as if human rights is universal, apolitical, ahistorical and natural to all humankind.

This has paper challenged universalism of human rights since “Human” in the Human Rights is shrouded in hypocrisy and ambiguities therefore as Hunt (2007) have stressed that “*We need to ensure that the “Human” in the Universal Declaration of Human Rights leaves none of the ambiguities of “man” in the “rights of man”*”. Fanon’s appeal to invent a concept of human in human rights in which decolonial struggle is recognized, then only collective humanity in universal sense be achieved.

Human rights discourse is mired in controversy; not only at the conceptual level but also its enforced implementation, particularly strategic use of humanitarian intervention and just war by West, under the discourse of human rights has stigmatised noble goal of human rights ethics..

On the one hand, human rights have become an effective tool to protect human agency, on the other, have been high-jacked by the moral custodian of the West such as Western academics, politicians and States. Thus, moral has become much political. Nonetheless, for some, discourse of human rights morally constrains States to take action to prevent human rights violations thus it is morally universal.

However, it is important to realize that Human rights which was once tool for 'social emancipation' and platform for progressive politics, has become troubled discourse of western hegemony which made human rights suspects. This paper has showed that human rights is a political weapon at the hands of mighty Western States and argued that moral foundation of human rights is not strong enough to support 'just war'.

Conflict of Interest

Author(s) confirms there are no conflict of interest with any parties involve in this publication.

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