

Rights: a Western reflection

Human rights News 15.7.02

Niaz A Shah Kakakhel

The prevalent human rights concepts are thought to be the reflections of the Western cultures and have no room for application in the non-western world — the Asian cultures in general and Islamic in specific. Yes, it looks that way. The human rights law rather the entire international law suffers from serious inherent Western bias. Europe saw the barbarity and inhuman treatment during World Wars opening the eyes of its political leadership to human dignity and worth, giving birth to the human rights law. Many human rights scholars share this view. More or less all human rights instruments further point towards confirmation of this view. This reflects that human rights law is mainly post-World War II phenomena of Western hue.

H Charlesworth and C Chinkin contend in *'The Boundaries of International Law: The Feminist Analysis'*: "Modern human rights law derives primarily from Western philosophical thoughts." Further they maintain: "Of particular significance in its development have been the values of Judaeo-Christian morality, natural law principles and political theories associated with the rationalism of the French and American revolutions." The major theories influencing the evolution of human rights law include John Locke's social contract and natural rights theories, Montesquieu's theory of the separation of powers between legislature, executive and judiciary and Rousseau's theory of the sovereignty of the people.

The Charter of the United Nations, a foundational treaty of huge significance which came into existence at the close of World War II, states in the Preamble "to save succeeding genera-

tions from the scourge of war" and "to reaffirm faith in fundamental human rights, in the dignity and worth of human person". The later sentence of the Charter became the bedrock of subsequent development of human rights law and has invariably remained the starting point of human rights instruments. The International Bill of Human Rights, European Convention of Human Rights 1951, American Convention on Human Rights 1969 and African Charter on Human and People's Rights 1981 are just to mention few instances. If UN Charter and UDHR are taken the starting point of modern movement of promotion and protection of human rights, many countries of Asia and Africa have no direct contribution to the formulation of these documents for many were still colonies of Western Nations.

By now it is clear that human rights law carries Western bias within it. This being the case, should all non-Western cultures discard human rights law because of its Western origin and philosophical foundation? Should human rights protection regimes pursue hardly their policy of implementation of these values and norms to alien and resistant cultures? I am of the opinion that both are extreme standpoints and the answer lies somewhere between the two extremes. All Western norms and values, being result and creation of human behaviour over the ages, are not strange to all other cultures in its entirety. Many of them overlap with other cultural values and traditions. As H Charlesworth and C Chinkin argue: "Although it also has some resonance in other cultural traditions."

Hence, it would be unwise to discard human rights law because it is a Western conception. It would be depriving other nations from the sense and wisdom accumulated over centuries underpinning these norms and

values and secondly many are the same in other cultures. These are the result of the human experiences populating this part of the world having influenced human thinking greatly for centuries. The factors influencing the evolution of these norms and values might be different than in other regions but they were human experiences undergone by human beings. Human rights formulations are the bottom lines for the treatment of human beings in various spheres of life, particularly vis-à-vis state and individual's relationship. People in other regions may have the same bottom lines for the treatment of human persons.

Dignity of human person and free and full consent of woman to marriage in Islamic law and human rights law are the two cases in point. At the same time human rights regimes must bear in mind the Western cultural bias of human rights law and allow room for the sound and humane norms and traditions of other cultures to stay in place. Displacing them would be overlooking the particularities of other cultures resulting in severe resistance frustrating the aim of the human rights movement. Every region has culture different than other informed by its specific geography and topography giving birth to singular habits, customs and thinking affecting in turn formulations of regulating human treatment and behaviour. The remarkable instance is the treatment of woman across the regions and cultures thereof.

A woman in Afghanistan must hide her head and face behind the veil since her culture dictates so and non-conformity leads to reproach, punishment and in some cases violent reaction from family and society. But in United Kingdom women are roaming on the

roads half dressed (which is common dress known to her) in windy and frosty night by herself. This has been the norm here and non-conformity would sound weird raising eyebrows among members of society.

The aim of human rights protection regime is not to show the ascendancy of one culture over the other. This would be taking cynic and fallacious view of human rights movement. The aim is to afford protective shield against inhuman treatment and upholding human dignity, the purpose every civilised nation claim to aspire for. To realise the aim, the Universalists must comprehend cultural diversity the world is composed of. If the sound cultural values of differing cultures are not incorporated into human rights concepts and tolerated, the dissenting voices will be sounding louder than before branding human rights as 'cultural imperialism' and 'imported commodity'. On the other hand, the upholders of cultural values and norms must see the common element of 'humanness' of human rights and should not dismiss the whole regime as propaganda of the West eroding domestic cultural values and norms. Otherwise sufferings of human persons will persist amid the raging debate between the opposing sides. To strike balance between the two extreme views, a demarcating line must be drawn to sever and distinguish human from cultural, that is divorcing universal from the domestic. Resolution lies on agreement on what is human that should tolerate cultural differences, evolving diversified human rights protection regime better protecting dignity of human person.

The writer is research (PhD) student, Institute of Governance, Public Policy & Social Research, Queen's University, Belfast