

# Human Rights for All: Fostering Integration and Social Cohesion

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## Abstract

Although, discourse on “human rights” has been recognized since the 17<sup>th</sup> Century, one of the most important milestone for the international human rights regime is the 1948 Universal Declaration of Human Rights (UDHR) which was adopted by the General Assembly on December 10, 1948. The Declaration was a response to the events taking place during World War II which demonstrated that economic development does not automatically bring about peace and respect for human rights. The essence of the Declaration covers: (1) Civil and Political (CP) Rights, and (2) Economic, Social, and Cultural (ESC) Rights. Since the Declaration was just a statement of intent by which no one is bound, the need for more concrete instruments to support the implementation of UDHR was realized immediately. But it took 18 years before the two International Covenants were adopted by the United Nations and another 10 years before the required number of member states ratified the two Covenants. The long delay was due to the advent of the cold war and reflected clearly the difficulty in transforming the concept to an acceptable reality. Even after the ratification of the two International Covenants, many national governments still debated the universality aspect of the concept. Consequently, it became evident that the notion of universalism has been continually challenged, negotiated, and evolved into tentative definition of human rights. Social construction of “rights” as well as paradigm shifts in interpretation and approaches have certainly been observed.

This paper attempts to show how human rights paradigm shifted in content, interpretation, approach, and means to achieve the intermediary goal of human rights promotion and protection to derive at the ultimate goal of society with social justice. The reconstruction and transformation of the understanding

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and interpretation of human rights range from ideal universalism to a more realist and critical interpretation in plurality of human rights. The debate moves further to the compatibility of issues of human rights, conflict transformation and peace building. The discussion on the contradictory, compatibility and/or complementarity of human rights and peace concepts still continues. Whether human rights could be compromised or reconciled for the sake of peaceful coexistence of all human beings also came into the debate. The title of this paper advocates that to achieve “human rights for all with integration and social cohesion”, a reconstruction of human rights concept, practices, and perspective as well as paradigm shift is required.

### **The shift in human rights paradigm**

Thomas Kuhn (1922-1996) must be recognized as the person who introduces the word “paradigm” and brought the word into the debate in social sciences, although the word was not readily grasped by all from the beginning. Kuhn (1970) advocated that changes which bring about revolutionary changes in scientific studies starts in the change in paradigm. When complexity of issue reaches the crisis stage, normal old paradigm can no longer provide answer or solution. New paradigm may bring a solution to the dead-lock. The Blackwell Dictionary of Sociology equates the word “paradigm” with “theoretical perspective” as follows:

A theoretical perspective (or paradigm) is a set of assumptions about reality that underlies the questions we ask and the kinds of answers we arrive at as a result. . . . . Theoretical perspectives are important because assumptions direct our attention and provide frameworks for interpreting what we observe (Johnson, 2000:327).

The change in paradigm brings about changes in questions to be investigated, which in turn influence data and information collection process, research tools adopted, and finally analytical process required. In other words, paradigm shifts or change in theoretical perspective lead to changes in methods and analysis which will lead to new discovery. Without paradigm shift, scientific revolution and new discovery in other discipline will not be possible.

Paradigm shifts in social science may be examined in different dimensions: the shift from grand theories to grounded theories, the shift from modernism to post-modernism, the shift from universality to diversity, and the shift from generality to specificity.

### **1. Shift in issues and contents**

Today, different people see human rights in different ways. Modern concept of human rights can be traced to traditional ideas and texts adopted at the end of the 18<sup>th</sup> Century. The intellectual origin of human rights lies in the concept of natural rights, which are inalienable, universal and applicable to all human beings by virtue of their humanity. The 1776 American Declaration of Independence and the 1789 French Declaration of the Rights of Man and of the Citizen represent attempts to enshrine human rights as guiding principles in the constitutions of new states or politics. People are born free and equal in rights which are natural and inalienable. Fundamental rights are human dignity, liberty, freedom, equality, and non-discrimination. They are universal and are the foundation of freedom, justice and peace in the world.

The struggle to reach agreement on what constitute human rights, after a long negotiated process taking place during the cold war was due to ideological differences among the contenders. According to Uvin:

The United States sought to limit the concept of human rights to civil and political ones, typically largely present in liberal market economies, while the USSR and its allies counter-argued that economic and social rights, in which communist countries claimed they were far ahead, were the very core of human rights. As a result, it took eighteen years, until 1966, for not one but two covenants to be adopted: one on civil and political rights, which as of late 2000 had been ratified by 147 countries, and one on economic, social, and cultural rights, to date ratified by 141 countries, not including the United States. Both of these covenants came into legal force by 1976. (Uvin, 2004:10)

The UDHR (1948) went beyond civil rights to embrace political rights and economic, social, and cultural rights. Hence, the separation into two covenants has created a sense that there are two levels of human rights. The civil and political (CP) rights have been recognized as the first generation and

include freedom from torture, degrading treatment, and arbitrary detention; as well as freedom of speech, association, and religion. The second generation of rights consists of economic, social and cultural (ESC) rights such as the right to education, the right to an adequate standard of living, and the right to the highest obtainable standards of health. International law is clear in saying that all human rights, both CP and ESC rights, are indivisible and mutually reinforcing, and many scholars are deeply convinced of that as well. (Uvin, 2004:14).

Subsequently, many more human rights conventions and resolutions followed to provide more detailed statements and expand protection into new areas including rights of various groups of people. These additional conventions covering various dimensions of rights are considered the third generation of rights. Right to self-determination or right to development which cover collective and communal rights are also included. The third generation of rights reflect profound shift in human rights thinking, which had previously been focused on individual rights exclusively.

## **2. Shift in Approaches**

Despite the adoption of UDHR in 1948, there have been disagreements among scholars, officials, and others concerning the universal applicability of all or some human rights. Peter Van Ness notes that the diverse views on Western and Asian perspectives on human rights share a notion of universalism as a continually changing, negotiated, and tentative definition of human rights (Peter Van Ness, 1999).

Along the same line, Niel Stammers compares human rights movements with the New Social Movements (NSM) when view from power-relations perspectives. He sees human rights as movement activism which challenged the authorities and struggled against power (Stammers, 2009:168). Five sites of power are identified. Two sites are more readily recognized, i.e., political and economic; while the other three sites are organized around (1) sex and gender, (2) ethnicity, and (3) the control of information and knowledge. However, Stammers argues that as social movement activism become more and more institutionalized, it reaches paradox of institutionalization. The five sites of power become threats. In geo-political terms, powerful states can legitimized

their foreign policy interests by using human rights instruments to limit and constrain power of other less powerful actor.

Richard Lewis Siegel (2004) using the term “social construction of rights”, to describe how human rights scholarship has expanded in recent years from a locus in idealist and liberal internationalist approach to a more comprehensive approach of realist and critical theory in viewing human rights in the dimensions of power, national interests, and polarity. Neoliberal internationalism also incorporates ideas such as globalization and western hegemony in the argument. Hence he sees that the expressions portray by many scholars of each camp in the debate indicate that the two approaches are far more complementary than conflicting. This is especially evident in transitional societies where issues of power politics together with globalism and human rights are being cautiously observed.

The shift is now diverted into two approaches, comprehensive and selective, which may be expanded in the following paragraphs.

(a) Advocates of a comprehensive approach argue that all of the major globally adopted human rights instruments are independent and collectively applicable to the entire international community. They insist on the equality of economic, social, and cultural rights with civil and political ones and the inclusion of such collective rights as national self-determination and the right to development, together with traditional individual rights. Amartya Sen is one advocate who believes in the ability of different people from different cultures to share many common values and to agree on some common commitments. (Sen, 1999: 244). He also believes that freedom can act as an organizing principle to achieve the common goals.

Comprehensive universalism has certain flaws and limitations that weaken the global support. There are also conflicts among rights. An example is the claims of indigenous peoples to self-determination and the maintenance of traditional approaches to justice, property, religious and other cultural practices that many be objectionable to the majority culture. Another is the desire to maintain certain traditional practices contradictory to modern health standard practices.

(b) Proponents of selective approaches suggest that a core set of fundamental norms and principles are universally applicable. These are selected from comprehensive lists of rights on such bases as their non-derogable status, their designation by certain international organizations or international forums as fundamental as well as universally applicable, and their claimed designation as customary international law.

The international community has combined its support of comprehensive universalism with endorsement of various sets of rights as core or fundamental, as well as universal rights. It is recognized that it is essential that any core rights approach to universalism should incorporate fundamental aspects of second and third generation human rights as well as civil/political rights. The difficulty lies in the agreement on the criteria used to decide on a core standard. It is also argued that although criteria selected should incorporate international law and the priorities of the member-states of particular international organizations, they do not guarantee that legitimacy and fundamental status will be decided objectively or rationally.

### **3. Shift to Core Rights Approach to Universalism**

It is increasingly recognized that there are radical as well as more moderate versions of universalism, as well as relativism. Siegel (2004) believes the following:

An expanding core-rights approach to universalism offers the soundest strategy for maximizing effective global acceptance and implementation of human rights. The expanding core approach avoids most of the inherent weaknesses of comprehensive universalism: it builds upon areas of strong scholarly and political support and allows for the further development of the universalist consensus in terms of geographic breadth, binding authority, interpretation, and implementation. (Siegel, 2004:61)

There is existing consensus in support of one or more sets of core human rights with possible global endorsement and effective enforcement. Consensuses which have strong support include crimes against humanity, genocide, core labour standard, and non-derogable elements of leading Human Rights Conventions.

This means that we are in the process of socially constructing global norms of multilateral relations based on normative principles of human rights which function as a building of a global system based on some agreeable concept such as good governance. In this process, while global norms are integrated into international order, action on the ground at domestic and state level needs to take place. In other words local communities need to identify with global norms. The relationship between domestic interests and global structure can then be mediated by civil society and transnational advocacy. The role of civil society or third sector is to communicate human rights norms to local residence. The adoption of human rights norm will have great impact on transformation of local political identification.

#### **4. The extension of human rights standards to non-state actors:**

The third generation of rights, specifically the Declaration on the Right to Development, adopted by General Assembly resolution 41/128 of 4 December 1986, brought about a turning point in development paradigm. In shifting from needs-based approach to rights-based approach to development, the boundaries between human rights and development disappear, and both become conceptually and operationally separable parts of the same processes of social change. Development comes to be redefined in terms that include human rights as a constitutive part. The two terms become meaningful if they are redefined in an integrated manner. By focusing on human rights, beneficiaries or participants become rights-holders.

In addition, the most recent addition to the human rights edifice consists of an extension not of claimants of rights but of duty-holders. According to Uvin:

“It seeks to bind non-state actors such as individuals, NGOs, international organizations, and especially multinational corporations. In traditional international law—the context within which the human rights edifice was constructed—only states are subjects of the law. Only states create international law, and only they are bound by it. To the extent that human rights law was concerned with the behavior of non-state actors, it was the state that was responsible for ensuring the correct outcome. It was up to states to prevent, investigate, and punish human rights violations committed by non-state actors within their territory. Individuals or corporations or NGOs could be objects of

international law—their behavior could be proscribed by it, or they could be granted rights—but this always happened through the intermediary of states, who are the only subjects of international law. (Uvin, 2004: 15).

In other words, violations of rights may be carried out by both state as well as non-state actors. The traditional assumptions that states are the ones who violate rights when examining civil rights no longer hold. However, this does not mean that states are exempted from obligations. From 2 to 6 June 1986, a group of distinguished experts met at the University of Limburg in Maastricht, the Netherlands to consider the nature and scope of the obligations of states parties to the ICESCR (International Covenant on Economic, Social, and Cultural Rights). “The Limburg Principles” was the output of the meeting. However, the outcome of the meeting did not materialized. The Limburg principles remained only the principles with no recognizable evidence of its implementation.

Again, from 22-26 January 1997, another group of more than 30 experts met in Maastricht to elaborate on the Limburg Principles as regards the nature and scope of violations of ESC rights and appropriate responses and remedies. The participants unanimously agreed to produce a document called “The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”. Like civil and political rights, ESC impose three different types of obligations on States: the obligations to respect, protect and fulfill. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of ESC rights. The obligation to protect requires States to prevent violations of such rights by third parties. The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights.

The other two groups of non-state actors need to be mentioned here. They are (1) Human rights defenders, and (2) Insurgents and/or terrorists. The Human Rights Fact Sheet No. 29 states: “To be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights.” The term has been used increasingly since the adoption of the Declaration on Human Rights Defenders in 1998. Until then, terms such as human rights activist, professional, worker or monitor had been



most common. Now, the term “human rights defender” is seen as a more relevant and useful term. (OHCHR: 2)

Insurgents and terrorists are considered non-state actors who use violence, designed to create extreme anxiety and/or fear-inducing effects in a target group larger than the immediate victims with the purpose of coercing that group into acceding to the political demands of the perpetrators. (Ramsbotham, Woodhouse, Miall, 2005: 69). They violate human rights regardless of the cause of their grievances. Insurgent groups are typically organized into cells, with leadership that is decentralized, loosely co-ordinated and largely anonymous. They usually attack soft targets who are civilians as well as security personnel, creating fear and insecurity among residents.

### **Human Rights, Conflict Transformation, Peace Building, and Social Justice**

Statements whether “human rights is a precondition for peace” or “peace is a precondition for human rights” does not lead to any substantive discussion. Attempts to identify peace and human rights reveal methodological weaknesses. Dimitrijevic (1998) gives the following description:

Human rights and peace are separate clusters of modal (instrumental) values. They partly overlap, but are not identical. Subsuming human rights under peace, or peace under human rights, is methodologically wrong and does not serve any meaningful educational or political purpose. In a world of sovereign nation-states, respect for human rights does not unequivocally result in peace. Peace and human rights being separate sets of values, one of them can take precedence so that, in the case of gross violations of human rights, the risk of international conflict becomes acceptable. There is no doubt that absence of peace, either international or national, endangers the enjoyment of human rights, totally or partially. (Dimitrijevic, 1998:64).

Azar (1990) introduced the concept of “protracted social conflict”. He emphasized that the sources of such conflicts lay predominantly within (and across) rather than between states, with four clusters of variables identified as preconditions for their transformation to high levels of intensity. He identified preconditions for protracted conflict to include adequate political institutions and good governance; cohesive social structures; opportunities for groups to

develop economically and culturally; and the presence of accepted legal or social norms capable of accommodating and peacefully transforming these formations. The first of the core problem is the relationship between identity groups and states or the “disarticulation” between the state and society as a whole. The deprivation of human needs has been identified as the underlying source of the second precondition. Third precondition identifies governance and the state's role as the critical factor in the satisfaction and frustration of individual and identity group needs. And finally Azar used the term 'international linkages' for the formation of domestic social and political institutions and their impact on the role of the state which are influenced by the patterns of linkage within the international system. (Ramsbotham, Woodhouse, and Miall, 2005:85-87).

In addition, abuse of human rights is also recognized as an indicator of incipient conflict. Human rights violations are often an early warning sign of impending conflict, and human rights can also trigger for escalation of conflict. In contrast, high levels of observance of human rights tend to accompany other related factors including democratic governance, level of development and quality of governance. Conflict prevention or transformation calls for a cooperative approach to facilitate peaceful solutions to disputes, and implies addressing the root causes of conflicts, of which human rights violations is one of the factor.

The question is whether reconciliation is acceptable in human rights context. Deeply traumatized individuals and groups are not ready for such an undertaking. Taking social justice to be the ultimate goal, reconciliation solution must deal with those who violated human rights which impacted on diverse groups of individuals psychologically, physically, culturally, as well as economically.

It has been said that there is a contradiction between peace and justice. Baker (1996) contrasts conflict transformers whose goal is peace with democratic activists whose goal is justice. Should peace be sought at any price to end the bloodshed, even if power-sharing arrangements fail to uphold basic human rights and democratic principles? Or should the objective be a democratic peace that respects human rights, a goal that might prolong the fighting and risk more atrocities in the time that it takes to reach a negotiated solution? (Baker, 1996).

In an attempt to transform conflict and derive a “democratic peace that respects human rights”, there must be an agreement to end the conflict. Ramsbotham, Woodhouse, and Miall (2005) believe that reconciliation is often easier after decisive defeat and victory. The losers may feel that they must 'reconcile' themselves to the outcome because it is unavoidable, while the winners may find it possible to be magnanimous. After agreeing to end conflict, it is necessary to overcome polarization. Efforts must be made to bridge deep differences by structural political and economic rearrangements, i.e., structural peace building. Finally, self-understanding and re-perception of relationship between self *vis-a-vis* others through forgiveness, toleration, or even appreciation, will bring about reconciliation. A third party is recommended to serve in the reconciliation committee. A certain degree of fact finding and truth validation is usually required to reach an agreement. There are many alternative paths to reconciliation; one may be more extreme than others. A combination of alternatives may bring about a more comprehensive solution. Ramsbotham, Woodhouse, and Miall offer the followings as examples: (1) official amnesia—letting go of the past, (2) truth commission—honouring the past, (3) trials—bringing the past before the tribunal of the present, (4) reparation—future compensation for the past, (5) ritual healing—exorcizing the past, and (6) retaliation—cleaning the slate by avenging the past. One or more of these methods may be selected.

John Paul Lederach (1997) is a strong supporter of building peace from below which means liberating communities from the oppression and misery of violence, human rights violations, respecting local cultures, and empowering indigenous people. He contrasts the prescriptive and elicitive peace building methods very clearly. Whereas prescriptive model operates by telling people how to build peace, elicitive model empowered people and encouraged them to express their thoughts on how to build peace. Furthermore, they also need to be involved in the peace building processes which have been jointly designed by all stakeholders concerned.

To achieve the goal of peace building and social justice, the Report of the Panel on UN Peace Operations (the Brahimi Report) rightly states:

Peace building is defined as activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war. Thus, peace building includes but is not limited to

reintegrating former combatants into civilian society; strengthening the rule of law; improving respect for human rights through the monitoring, education and investigation of past and existing abuses; providing technical assistance for democratic development; and promoting conflict resolution and reconciliation techniques. (UN, 2000).

## **Conclusion**

To achieve the goal of “Human Rights for All”, it is necessary to change the mindset of all who are involved. Human rights advocates or human rights defenders may adopt different strategies in approaching the issue. Those working on human rights from negative rights angle tend to adopt violations approach, i.e., monitoring violations of rights. Many human rights defenders use the ‘blame and shame’ tactic. Thus, the adoption of a violations approach is bound to become rather antagonistic and confrontational, juxtaposing human rights activists with offending government or even non-state actors. However, another strategy is to adopt a more positive approach in focusing on how to fulfill basic rights of the people. In the globalizing world of today, the Maastricht Guidelines provide all stakeholders with a working tool to deal with human rights in a more comprehensive manner. States must realize their obligations to respect, protect, and fulfill. It is the obligation of the states to respect the rights of the people, to protect the people from being violated by third parties, and to fulfill the basic rights of those whose rights have not been recognized.

One may choose to adopt human rights paradigm which can be used as a tool to bring about changes in perception on the relationship between the powered and the powerless. Human rights instrument can also help bring about conflict transformation with the goal of social justice and sustainable peace. The argument that human rights solution and peace building are not compatible is based on the zero-sum model. New initiatives and more innovative solutions must be sought to incorporate the two sets of values into the conflict transformation and peace building processes.

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