

THE QUESTION OF MINORITY RIGHTS: A COMPARATIVE ANALYSIS

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ABSTRACT

Human rights are those rights which belong to the person equally for being a human. They are universal in nature because they are available to all human being irrespective of their religion, race, caste, gender, place of birth etc. On the other hand, minority rights are the normal individual rights as applied to members of racial, ethnic, class, religious, linguistic or gender and sexual minorities. The concept of universality of human rights is not clear or beneficial for every society or country until it is implemented in conformity with the prevailing conditions in different societies. The concept of human rights cannot be equally applicable for every society or community. Harmonious relation of one minority with the other and between the minorities and majorities is a great asset to the multi-ethnic and multi-cultural diversity of global society. It is of prime importance that each citizen has respect for individual group's identity.

Keywords: Minority Rights, Human Rights, Collective Rights, Minority and Ethnic Groups, Community, Liberalism.

"... The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live".¹

Minority rights are those rights which are provided by a state to protect the rights of minority groups and to eliminate discrimination against them. While the Universal Declaration is based on the concept of individual human rights, under which all forms of discrimination have been prohibited. Individual rights have been provided through this, in which all individuals can protect their cultural traditions and practice them freely. In order to protect the minority rights under international laws it was provided that no restriction should be imposed on the members of minority communities, rather they should be granted such rights which help them to practice

¹ Preamble of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

their cultural activities fearlessly.² But there seems to be many problems in these rights and laws at ground level as these rights relate only to the rights of minority persons, not with the minority groups. Such laws do not define any duty of the state towards minority groups. Many more provisions have been made for the rights of minority groups through the United Nations but no one could provide security for the rights of minority groups.

In fact, the liberal democratic theory has not been created in such a way that the problems of minority cultural groups can be solved. Liberalism wanted freedom from traditional community restrictions in relation to the rights of the individual; hence it gave preference to individual's right over the rights of the community. Due to this reason the liberal democratic approach to address the problems related to minority rights has received widespread challenges at both practical and theoretical levels.³

According to Will Kymlicka, under the majority society some cultures are definitely given priority due to that some minority cultures remain neglected. He believes that the individual observe his autonomy and freedom of choice under his cultural environment. Therefore, liberalism should provide the importance and security to the cultural communities, which is the basis of the individual's decision.⁴ But Kymlicka also argues that such minority cultural rights should be given to those minority groups who do not impose restrictions on the freedom of their group members as the rights of the individual can never be compromised on the name of community freedom.

Kymlicka never acknowledges minority rights as human rights. In the *Multicultural Citizenship*, he clarifies: "it has become increasingly clear that minority rights cannot be subsumed under the category of human rights. Traditional human rights standards are simply unable to resolve some of the most important and controversial questions relating to cultural minorities: which languages should be recognized in the parliaments, bureaucracies, and courts? Should internal boundaries be drawn so that cultural minorities form a majority within a local region? Should political offices be distributed in accordance with a principle of national or ethnic proportionality? Should the traditional homelands of indigenous peoples be reserved for their benefit, and so protected from encroachment by settlers and resource developers? What are the responsibilities of minorities to integrate? What degree of cultural integration can be required of immigrants and refugees before they acquire citizenship?"⁵

² Morsink, J. "Cultural Genocide, the Universal Declaration and Minority Rights", *Human Rights Quarterly*. Vol. 21, No. 4. p. 1023.

³ Guttmann, Amy (ed.). *Multiculturalism: Examining the Politics of Recognition*. p. 9.

⁴ Kymlicka, Will. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. p. 3.

⁵ Kymlicka, Will. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. p. 4.

According to Kymlicka, the human rights cannot fully address the problems related to minority rights. Minorities suffer from discrimination of majorities even under the liberal societies and this discrimination is done without violating any human rights. According to Kymlicka, minority cultural communities criticize human rights on two bases, “the first is foundational. Some critics argue that the conception of human personhood and human needs underlying the doctrine of human rights is culturally biased. More specifically, it is 'Eurocentric', and exhibits a European commitment to individualism, whereas non-Western cultures have a more collectivist or communitarian conception of human identity. On this view, given the depth of cultural differences around the world, the very idea of developing a single set of universal human rights is inherently ethnocentric, and involves imposing one culture's view of human personality and human identity on other cultures.”⁶

First reason for criticism of the human rights is its structure. Minority groups believe that the nature of human rights is entirely based on cultural bias as they are centred on the individualistic concept of Western culture, whereas Non-Western countries mostly stress collective sentiments. Therefore, cultural diversity should be given adequate importance in the universal concept of human rights.

According to Kymlicka, “the second challenge is more modest. Some critics say that the idea of universal human rights is acceptable in principle, but that the current list of human rights is radically incomplete. In particular, it fails to protect minority cultures from various forms of injustice, and so needs to be supplemented with an additional set of what are sometimes called 'collective rights' (or ‘group rights’, ‘minority rights’, or ‘cultural rights’).”⁷

The second basis of criticism of human rights is due to their incompleteness in original form. Minority groups believe that this incompleteness can be accomplished by linking them with minority cultural rights.

Kymlicka argues that no unfair conduct is done with minority cultural groups through the concept of human rights but the problem is that it remains unanswerable to the injustice being done in some areas. He claims that, “the problem is not that traditional human rights doctrines give us the wrong answer to these questions. It is rather that they often give no answer at all”.⁸ He, further, clarifies: “the right to free speech does not tell us what an appropriate language policy is; the right to vote does not tell us how political boundaries should be drawn, or how

⁶ Kymlicka, Will. *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*. p. 69.

⁷ Kymlicka, Will. *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*. p. 70.

⁸ Kymlicka, Will. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. p. 5

powers should be distributed between levels of government; the right to mobility does not tell us what an appropriate immigration and naturalization policy is.”⁹

The right to freedom of expression does not talk about the language in which it should be expressed. In most democratic countries the language of majority is accepted as official language. According to Kymlicka, “human rights doctrines do preclude any attempt by the state to suppress the use of a minority language in private, and may even require state toleration of privately funded schools that operate in the minority language. But human rights doctrines say nothing about rights to the use of one's language in government”.¹⁰ Similarly, on issues of internal migration and internal political subunits it does not do justice with minority groups. Human rights leave such issues in the hands of majorities which results into injustice to minorities.

In addition to Kymlicka, James Tully also presents his arguments against liberalism and universal human rights in respect of cultural diversity. According to Tully, we have entered the final phase of dictatorial politics; in which the first phase was related to the struggle for democratic citizenship, the second phase was against global colonialism and the third phase is related to identity politics.¹¹ He believed that cultural diversity is the basic features of today's society. The cultural interaction prevails in the individual's original nature. During mutual interaction the person gets familiar with each other's culture. Therefore cultural identity is the basic need of the person. Discrimination with minority cultural communities is ignored by liberalism. So, under the liberal system, the constitution should promote intercultural discussions to deal with minority cultures, in which the representatives of cultures can keep their viewpoints properly.

Unlike Tully, Brian Barry favors the principle of human rights based on the liberal democratic concept and rejects the concept of minority cultural rights. According to Barry, liberalism arranges all kinds of diversities in a justified manner.¹² He believes that liberal democracy is justified because it is treated equally with everyone. Barry is against institutionalizing cultural diversities.¹³ According to him, equal participation in a common institution gives greater harmony to minority cultures and this is the most important method to provide security to minority groups.

⁹ Ibid. p. 5.

¹⁰ Kymlicka, Will. *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*. p. 78

¹¹ Tully, James. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. p. 15.

¹² Barry, Brian. “Liberalism and Multiculturalism”, *Ethical Perspectives* 4/2. p. 3.

¹³ Barry, Brian. *Culture and Equality: An Egalitarian Critique of Multiculturalism*. p. 144.

Thus, we see that the concept related to minority rights favors two types of rights. According to the first views, citizens of minority groups should be given individual rights. This thought is associated with the principle of human rights. On the contrary, according to the other thought, minority groups should be given community rights. This thought disagrees with the principles of human rights.

Arguments against universal human rights given by Kymlicka cannot be rejected. Despite this, Kymlicka's views on minority rights do not appear to be more effective as he is in favor of granting minority rights to liberal groups only. In addition, Tully's approach to protect minority cultural rights is more arbitrary than liberal democracy. Berry's views about the problem of minority groups also do not pave the legitimate path, rather establishes the dominance of majority culture in the disguise of fair justice.

CONCLUSION

It can be said that, human rights today has given voice to the traditionally neglected sections of society, whose rights were not protected by law. These rights are essential for dignity of humanity. Human rights act as shield or cover against dictatorship. In the contemporary time, when our identity, culture, and life is being shaped by market economy, new forms of production, and developments in information technology, the role of human rights become more important.

Community rights are essential to protect dignity of the person and are equivalent to human rights. In case of conflict between minority rights and human rights, the later should be protected and preferred as no general theory has yet been framed for minority cultural rights. Therefore, minority rights should be enforced with universal human rights. From this, the natural rights of the individual will be safeguarded in context to his cultural community. Minority rights do not create any obstacles in implementation of human rights, rather support them. If human rights are framed keeping view of the local requirements then the chances of conflict between the two will end automatically. Thus minority rights will be helpful in implementation of human rights, which will be beneficial for the entire society. Minority rights are for the benefit and advancement of a particular society, whereas human rights are the necessary conditions of life for each community. The actual purpose of human rights can be achieved only when all human beings are so capable that they can make proper and expected use of human rights. Minority rights are meaningful measures for the creation and development of this capability in a particular class of human beings. The base provided by the minority rights will definitely be accessible to human rights.

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