

PROTECTION OF HUMAN RIGHTS IN A GLOBALIZED WORLD

1. Introduction

Before we discuss the issue of protection of human rights, we should define the term of "the protection of human rights. What does the protection of human rights mean? Man is undoubtedly the highest living creature on the earth and since man through his superior abilities has brought all other living creatures under his control. We may ask why the question of human rights has come in to being at all. The question must indeed be answered in order to show that this right is worth protecting. Human being can truly reach his human potential living in a society. An individual man produced by society and a society produced of individual men can not be conceived of separately. One cannot speak of the life, the happiness or the health of society, unless the life, the happiness and the health of the individuals who make up the society has been assured. If the members of the society can establish their own rights according to what they themselves value, and if they can bring into force their own system to protect these rights then the problems of communal living within that society are automatically solved.¹

There are two levels for the protection of human rights. These are national and international levels. Both levels include different problems. The most important institution to protect the human rights in international level is the United Nations. Some of the main problems encountered by the UN in the protection of human rights are problems of governmental commitment, problems of perspective and priorities, problems in the field of fact finding, responsibilities in the information process, problems stemming from ideological competition, problems of resources.² The protection of human rights and of the basic freedom which were at one time unwritten laws, have been formulated as written law. European Human Rights Convention, European Court of Human Rights, The Human Rights Commission of United Nations Economic and Social Council is also actively engaged in the protection of these rights. The role of UN in the protection of human rights is very

¹ Müftügil, Ş., "What is meant by the protection of human rights?", The Philosophical Foundation Of Human Rights, 1982, s.87-93

² Ramcharan, B.G and BOVEN. C., "Problems In The Protection Of Human Rights At The International Level" The Philosophical Foundation Of Human Rights, 1982, s.105-111

important. In addition to these UNESCO, UNICEF, ILO, WHO and many other international organizations are also engaged in the protection of human rights throughout the world.³

For the protection of human rights in national level We see four types of system. The first one is the British system. In this system , parliament acts as the sole interpreter of the national will and legally free of any constitutional limitation. Second system recognize the overriding authority of the parliament but imposes a limitation upon the parliament by a written constitution. The third system allows a certain pre-examination of the parliamentary action by a non legislative body applying the principles of the constitution to the prospective acts of the parliament. The fourth system rests on the judicial review of the laws enacted by the parliament from the point of view of their conformity to the constitutions. In spite of all these, the protection of human rights at the national level doesn't always mean their protection in accordance with universally recognized standards. There must be two prerequisites to achieve such a harmony in the long run.

-The creation of international mechanism capable of acting as the last instance for appeal against uncertified violations of human rights at the national level and equipped with powers of sanction against the nation state.

-The lifting of the strongest barrier on the way to such international control.⁴

On the other hand The protection of human rights can not be left only the protection of law. The protection of human rights has to be based on the justifiable assumption that this protection is an ethical question. It is not a political one. At national level it is partly political. Fort hat reason philosophy plays an important role in the protection of human rights. it is the special task of philosophy to call attention and contribute the universelization of human rights.⁵

2. Economic And Social Rights

³ Müftügil,age,s.90

⁴ Soysal, M, "Protection Of Human Rights At The National Level", The Philosophical Foundation Of Human Rights, 1982,s.121-125

⁵ Kuçuradi.İ, "Summary", The Philosophical Foundation Of Human Rights, 1982, s.179-181

Is globalization advancing the protection of human rights or weaken the protection of human rights? It is a reality that Globalization creates a big gap between the rich and poor in a society. On the other hand globalization creates new opportunities for human rights.

We can concentrate on these different conflicting dimensions of globalization. Globalization provides opportunities to reach wealthy. But according to the 1999 Human Development Report from the United Nations Development Program, more than 1.3 billion people in the world live on less than a dollar a day. This may be accepted as the result of globalization. When we look around the world we can easily see that there are many armed conflicts around the world, minorities are giving rise to dreams of annexation or succession.⁶

One should recognize that there are aspects of capitalism that represent dramatic improvement when compared to the feudal arrangements that prevail in much of the global South: its progressive capacity, its formidable power to develop the forces of production, to regenerate new needs and to kindle humans' unlimited possibilities(Marx 1976). As a result of that we see the rules imposed on developing countries by the institutions controlling globalization such as IMF, World Trade Organization and so on. These organizations have worsened the poverty by using the rules of Globalization. At that point we need to find a human rights approach to free globalization from its destructive effects.

We shouldn't forget that the situation of the workers in self sufficient feudalism may be worse according to the globalized world. Bu in reality , millions of young women beyond the reach of globalization are left with no choice except subjugated under the patriarchal domination or arbitrary tyranny like in Pakistan or Nigeria. For woman and the other people living in impoverished region of the world opportunities created by the market driven economic growth should be welcomed because these opportunities may give rise the results which help these people to escape poverty and realize democratic aspiration. Both economical growth and the

⁶ Micheline. R. I, "What are human rights? Six historical Controversies", Journal Of Human Rights, Vol. 3, No. 3, s.359-371

institutions of the states are vital to rescue the poor people. In that case to get the advantage of market economy innovative human right perspective needs much more interventions of the states in public health, education, civil institutions and economic infrastructure. On the other hand the states needs the supportive participation of the international financial organization. If the depths of third world countries were forgiven, the developing countries could combine economic development with social justice. Keeping people awake, controlling the spread of epidemics and providing clean water are the subject of globalization. In this sense globalization should be seen as a means to advance political, civil, social and economic rights. Building global welfare mechanism and economic development and human rights concerns are not in the responsibility of policymakers. These tasks need the intervention of the human rights community which in the current climate of fear must vigilantly resist narrow and short-sighted security, cultural, and economic pressures. These forces always result in the fragmentation of what should remain the inalienable and indivisible mission of that community, namely its relentless fight for civil, political, social and economic rights for the visible, less visible, and conveniently unnoticeable among us, within and beyond every national border.⁷

After the Second World War development has been accepted only development in economy and we can learn a few things from its result. Globalization is also accepted globalization in free market. According to Kuçuradi there is no conceptual and factual relation between the free market and human rights, expectation about the free market to provide the protection of human rights give rise to new problem in developing countries. Supporters of free market are creating a relation between human rights and free market and they intend to protect economic freedom as a basic human right like freedom of thought . they area not distinguishing between basic rights and social and economical rights. They area confusing different ways to protect two different groups of human rights. At the and they area offering not to limit the economical activities.⁸

⁷ Micheline. R. I,age,s. 368

⁸ Kuçuradi.İ,” Evrensel Bildirgenin 50. Yılında İnsan Hakları, Elli Yıllık Deneyimler Işığında Türkiye’de ve Dünyada İnsan Hakları,2004,s.26-27

The protection of social and Economic is not directly related with the individuals, but political decisions and provisions. But all the political decisions are the product of individuals also. These social and economical rights can be provided by the recognized rights . The limitation of these rights changes according to the welfare condition of the state. These social and economical rights can not be protected. These rights are recognized or taken. If these kinds of recognized rights are being shared equally, some of the basic rights are protected. ⁹

Nowadays in the world homogeneous civil and political rights model which is created by libertarianism and neoliberalism is dominant. But it is not true to tell the same things about social and economic rights. Although these economic and social rights are accepted by UN, they are not being demanded as much as civil and political rights.¹⁰

3. Cultural Rights

The term of cultural rights has two different meaning. The first meaning (generally accepted by the western countries) indicates the the right of an individual such as participating in a conference or listening a music, preparing a performance, dealing with making sculpture and so on). According to another explanation which is accepted by the undeveloped or developing countries it includes the participation in cultural life. But the nations of undeveloped or the developing countries accept the cultural rights as a kind of group right which enables people to have the ability to save their cultural differences. For the second definition the right of culture may be accepted the right of a group. Bu we know that only individuals have human rights and the owner of rights are the individuals. International human right conventions and treaties have both kind of cultural rights. If the right is based on the value and possibility of a person as human being such as right of education it is obvious that this right must be protected. If the subject belongs to a culture or a group than we must evaluate the situation We must determine how the situation is related with the abilities and value of the human being. In some cases some cultures don't make

⁹ Kuçuradi.İ, “ Felsefe ve insan Hakları”, İnsan Hakları Kavramı ve Sorunları,2007,s.6-7

¹⁰ Riveron.Thalia.F, “Globalization and The Human Rights “, Elli Yıllık Deneyimler Işığında Türkiye’de ve Dünyada İnsan Hakları,2004,s.239-240

any contribution to use of human abilities and not creating suitable situations for the person to use their abilities. Briefly we must distinguish “cultura animi” between the definition of culture as plural.¹¹

4. The Effect of the Multiculturalism and Globalization on Human Rights

The end of the cold war has created "a new world order". So far, the only certainty is that the international community has entered a period of tremendous global transition created more social problems than solutions. The end of super-power rivalry caused the growing disparity in wealth and access to resources, alarming increase in violence, poverty and unemployment, homelessness, displaced persons and the erosion of environmental stability. The world has also witnessed one of the most severe global economic recessions since the Great Depression of the 1930s. At the same time, previously isolated peoples are being brought together voluntarily and involuntarily by the increasing integration of markets, the emergence of new regional political alliances, and remarkable advances in telecommunications, biotechnology and transportation that have prompted unprecedented demographic shifts.

The resulting confluence of peoples and cultures is an increasingly global, multicultural world brimming with tension, confusion and conflict in the process of its adjustment to pluralism. There is an understandable urge to return to old conventions, traditional cultures, fundamental values, and the familiar, seemingly secure, sense of one's identity.

This climate of change and acute vulnerability raises new challenges to our ongoing pursuit of universal human rights. **How can human rights be reconciled with the clash of cultures that has come to characterize our time?** Cultural background is one of the primary sources of identity. It is the source for a great deal of self-definition, expression, and sense of group belonging. As cultures interact and intermix, cultural identities change. This process can be enriching, but disorienting. The current insecurity of cultural identity reflects fundamental changes in how we define and express who we are today.

¹¹ Tepe.H, Kimlik Kimlikler ve İnsan Hakları, Elli Yıllık Deneyimler Işığında Türkiye’de ve Dünyada İnsan Hakları,2004,s.88-97

This situation sharpens a long-standing dilemma: **How can universal human rights exist in a culturally diverse world?** As the international community becomes increasingly integrated, how can cultural diversity and integrity be respected? **Is a global culture inevitable?** If so, is the world ready for it? How could a global culture emerge based on and guided by human dignity and tolerance? These are some of the issues, concerns and questions underlying the debate over universal human rights and cultural relativism. ¹²

Cultural relativism is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives. Some would apply this relativism to the promotion, protection, interpretation and application of human rights which could be interpreted differently within different cultural, ethnic and religious traditions. In other words, according to this view, human rights are culturally relative rather than universal.

Taken to its extreme, this relativism would pose a dangerous threat to the effectiveness of human rights. If cultural tradition alone governs State compliance with international standards, then widespread disregard, abuse and violation of human rights would be given legitimacy.

Largely through the ongoing work of the United Nations, the universality of human rights has been clearly established and recognized in international law. Human rights are emphasized among the purposes of the United Nations as proclaimed in its Charter, which states that human rights are "**for all without distinction**". Human rights are the natural-born rights for every human being, universally. They are not privileges. The Charter further commits the United Nations and all Member States to action promoting "universal respect for, and observance of, human rights and fundamental freedoms". Universal Declaration of Human Rights affirms consensus on a **universal standard of human rights**. Universal human

¹² Shenkber-Ayton.D, "The Challenge of Human Rights and Cultural Diversity", United Nations Department of Public Information DPI/1627/HR--March 1995

rights are further established by the two international covenants on human rights (International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil and Political Rights), and the other international standard-setting instruments which address numerous concerns, including genocide, slavery, torture, racial discrimination, discrimination against women, rights of the child, minorities and religious tolerance.

All Member States of the United Nations have a legal obligation to promote and protect human rights, regardless of particular cultural perspectives. Universal human rights protection and promotion are asserted in the Vienna Declaration as the "first responsibility" of all Governments. No State is exempt from this obligation. Everyone is entitled to human rights without discrimination of any kind. The non-discrimination principle is a fundamental rule of international law. This means that human rights are for all human beings, regardless of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Non-discrimination protects individuals and groups against the denial and violation of their human rights. To deny human rights on the grounds of cultural distinction is discriminatory. Human rights are intended for everyone, in every culture. One cannot pick and choose which rights to promote and protect. They are all of equal value and apply to everyone

Human rights are the birthright of every person. If a State dismisses universal human rights on the basis of cultural relativism, then rights would be denied to the persons living under that State's authority. The denial or abuse of human rights is wrong, regardless of the violator's culture.

Universal human rights do not impose one cultural standard, rather ethic standard of minimum protection necessary for human dignity. Universal human rights represent the hard-won consensus of the international community, not the cultural imperialism of any particular region or set of traditions. Like most areas of international law, universal human rights are a modern achievement, new to all cultures. Human rights are neither representative of, nor oriented towards, one culture to the exclusion of others. Universal human rights reflect the dynamic, coordinated efforts of the international community to achieve and advance a common standard and international system of law to protect human dignity.

On the other hand universal human rights emerge with sufficient flexibility to respect and protect cultural diversity and integrity. The flexibility of human rights to be relevant to diverse cultures is facilitated by the establishment of minimum standards and the incorporation of cultural rights.

Universal human rights establish minimum standards for economic, social, cultural, civil and political rights. Within this framework, States have maximum room for cultural variation without diluting or compromising the minimum standards of human rights established by law. These minimum standards are in fact quite high , requiring from the State a very high level of performance in the field of human rights.

Human rights which relate to cultural diversity and integrity encompass a wide range of protections, including: the right to cultural participation; the right to enjoy the arts; conservation, development and diffusion of culture; protection of cultural heritage; freedom for creative activity; protection of persons belonging to ethnic, religious or linguistic minorities; freedom of assembly and association; the right to education; freedom of thought, conscience or religion; freedom of opinion and expression; and the principle of non-discrimination.

Every human being has the right to culture, including the right to enjoy and develop cultural life and identity. Cultural rights, however, are not unlimited. The right to culture is limited at the point at which it infringes on another human right. No right can be used at the expense or destruction of another, in accordance with international law.

This means that cultural rights cannot be invoked or interpreted in such a way as to justify any act leading to the denial or violation of other human rights and fundamental freedoms. As such, claiming cultural relativism as an excuse to violate or deny human rights is an abuse of the right to culture.

The argument of cultural relativism frequently includes or leads to the assertion that traditional culture is sufficient to protect human dignity, and therefore universal human rights are unnecessary. Furthermore, the argument continues, universal human rights can be intrusive and disruptive to traditional protection of human life, liberty and security. When traditional culture does effectively provide such

protection, then human rights by definition would be compatible, posing no threat to the traditional culture. As such, the traditional culture can absorb and apply human rights, and the governing State should be in a better position not only to ratify, but to effectively and fully implement, the international standards.

Rather than limit human rights to suit a given culture, why not draw on traditional cultural values to reinforce the application and relevance of universal human rights? There is an increased need to emphasize the common, core values shared by all cultures: the value of life, social order and protection from arbitrary rule. These basic values are embodied in human rights. Traditional cultures should be approached and recognized as partners to promote greater respect for and observance of human rights.

Working in this way with particular cultures inherently recognizes cultural integrity and diversity, without compromising or diluting the unquestionably universal standard of human rights. Such an approach is essential to ensure that the future will be guided above all by human rights, non-discrimination, tolerance and cultural pluralism. ¹³

Av. Yalçın TORUN

UYARI

Web sitemizde yayımlanan yukarıdaki yazılı metnin, eser sahipliği hakları Av.Yalçın TORUN'a aittir. Bu yazılı metin hak sahipliğinin tespiti amacıyla zaman içerikli elektronik imza ile muhafaza edilmektedir. Sitemizdeki yazılı metinler avukat meslektaşlarımız tarafından dilekçelerinde serbestçe kullanılabilir, fakat metinlerin tamamının, bir kısmının veya özetinin atıf yapılmaksızın başka web sitelerinde yayınlanmasına iznimiz yoktur

¹³ Shenkber-Ayton., age,s.

