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The Universality of Human Rights: A Review

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Abstract

The claim that human rights are rights that all human beings hold everywhere and at all times embodies the concept of universality. There are some that hold a contrary believe. To them, human rights are culturally relative. This paper explores an understanding of the basic concepts of human rights juxtaposed with the idea of universality and cultural relativity of human rights. The researchers employ doctrinal method of legal research for this research as materials are collated from textbooks, case laws, journals and internet sources. In resolving the question of universality or culturally relativity of human rights the paper discovered that there is a minimum global standard for treating people by which state laws and practices are to be measured. The paper recommends that far from insisting on uniformity, the International Bill of rights ought to be the basic yardstick for global diversity. It further recommends that the content and scope of human rights expands according to the dictates of human experience, and in response to economic, socio-political, environmental and cultural variables.

Keywords: Rights, Human Rights, Universality and Cultural relativity

1. Introduction

Human rights are grounded in the notion that people, by virtue of being human, have certain fundamental and inalienable rights.[1] Under international human rights law, states have an obligation to respect the human rights of their citizens.[2] Furthermore, the international community has a responsibility[3] to protest when a state neglects this obligation. While states readily agree that human rights should be protected by international law, the definition and scope of human rights remain contested. One dimension of this debate concerns the universal versus relative nature of rights.[4] In 1948, the United Nations adopted the UDHR. Since then, the international community has also adopted numerous additional instruments to protect human rights. Despite all these, the question of universality or cultural relativity of human rights remains a question engineering much debate. This paper therefore seeks to give a clear understanding of the relevant subjects in the above discourse, to wit, human rights, universality or cultural relativity of human rights.

2. The Concept of Rights

The meaning of the word "right" has been a subject of confusion in the realm of jurisprudence. Jurists have put forward many theories, all in a bid to locate a precise meaning of the word "right". It is not the focus of this research to delve into the complicated jurisprudential controversy on the rights theories. That notwithstanding, some of the definitions will be given, while adopting a simplistic approach for the purpose of our present study.

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[1] R D Sloane, 'Outrelativizing Relativism: A Liberal Defense of the Universality of International Human', Rights , (2021) 34 (3) Vanderbilt Journal of Transnational Law, 34

[2] See <https://www.un.org/en/about-us/un-charter/full-text> accessed 26 May 2024.

[3] See<https://www.britannica.com/topic/international-law/The-responsibility-of-states> accessed 26 May 2024.

[4] One of the intense debates in the human rights movement involves the 'universal' or 'relative' character, related to the 'absolute' or 'contingent' character, of human rights.

According to Hon. Justice C.A. Oputa Rtd, a right is a well-founded claim which when recognized by the civil law, becomes acknowledged claim or legal right enforceable by the power of the state.[5] On the other hand, Oliver Holmes asserted that a legal right is nothing but a permission to exercise certain natural powers and, upon certain conditions, to obtain protection, restitution, or compensation by the aid of the public force.[6] Similarly, John Salmond defined a right as an interest or benefit recognized by law.[7] Salmond emphasized the importance of enforceability of such interests by law. In essence, if a certain interest is not recognized by law, it cannot qualify as a right. According to Ronald Dworkin, rights are trumps for justifying political decisions that state a goal for the community as a whole.[8] And for Raz, a right exists when an aspect of a person's wellbeing is sufficient reason for holding some other person or persons to be under a duty.[9]

On his own part, Ogbu, while discussing the meaning of rights, states thus:

> *The word "right" in the noun form means that to which a person has a just and valid claim, whether it be land, a thing, or the privilege of doing something or saying something. In the legal parlance, a legal right is either the liberty (protected by law) of acting or abstaining from acting in a specific manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. A legal right is thus the capacity residing in one man, or group of men controlling, with the assent and the assistance of the state.*[10]

2.1 The Concept of Human Rights

Human rights are those rights that accrue to human beings for the singular reason that they are humans. They are those rights which every human being everywhere and at all times equally have or ought to have by virtue of being human beings.[11] Human rights can also be defined as those rights, which every individual born into the world possesses, right from the moment of birth until they die. Human rights are part of the gifts from God. For this reason, they can also be described as universal.[12]

According to Louis Henkin,[13] human rights can be defined as those liberties, immunities and benefits which by accepted contemporary values; all human beings should be able to claim as of right of the society in which they live.[14]Ezejiofor,[15] a renowned scholar defined human rights as moral rights, which every human being everywhere at all times, ought to have, simply because of the fact that in contradistinction with other beings, he is rational and moral. Eze, [18] on his own part defined human rights as "demands or claims, which individuals or groups make on society, some of which are protected by law and have become part of the *lex lata*[16], while others remain

[5] C.A. Oputa, *Human Rights in the Political and Legal Culture of Nigeria. (*Lagos:Nigeria Law Publications,1989) p.38.
[6] O.L.Holmes, *The Common Law* (Back Bay Books, 1964) p 214.
[7] J Salmond, *Jurisprudence,* (London: Sweet&Maxwell, 1966) p.72.
[8] R Dworkin, *Taking Rights Seriously,* (London: Duckworth & Co.Ltd. 1977) pp 232-238.
[9] J Raz, *The Morality of Freedom,* (London: Oxford University Press,1986) p.116.
[10] O N Ogbu, *Human Rights Law and Practice in Nigeria* (Enugu: CIDJAP Press, 1999) pp. 1.4
[11] Ibid.
[12] C C Nweze, 'Human Rights and Sustainable Development in the African Charter', A paper presented at a workshop on Human Rights organized by the NBA Enugu Branch on 17th September 1997.
[13]L Henkin, A Renowned Columbia Law School Professor Credited with Founding the Study of Human Rights Law and Inspiring Generations of Legal Scholars, died on October 14, 2010, at the age of 92.
[14]U O, *The African Charter on Human and People's Rights* (London: Martinus Nijhoff Publishers, 1997) p5
[15] G Ezejiofor, *Protection of Human Rights Under the Law* (London: Butterworths1964) p 3.
[16]This is a Latin expression which means the law which is presently in force; the law as it 'is'.

aspirations to be attained in the future. This is a positivist view point and can be challenged with respect, on the basis of attempting to place the cart before the horse. His definition, when critically analyzed, can be seen to undermine the place of nature in the discuss of human rights. His definition places undue limitation on the congenital nature of human rights and therefore cannot be seen to be apposite. There was the existence of Human rights even before the creation of states. Therefore, human rights are inherent in man and independent of the state. Eze's definition is simply erroneous for categorizing human rights as 'demands or claims' because a person cannot demand what is inherent in him or intrinsic in human nature and which cannot be taken away from him. It is also noteworthy that there are many demands or claims which we as human beings make on the state which on critical examination may not be classified as human rights. Some demands we as individuals make on society may even be antithetical to human rights and may even be contrary to the values of the society. A definition of human rights as presented by Dowrick seems to be an improvement on the definition by Eze. Dowrick defines human rights as "Those claims made by men, for themselves or on behalf of other men, supported by some theory which concentrates on the humanity of man, on man as a human being, a member of humankind…"[17]

In the same vein, M.Cranstonon contributes to the subject when he defined human rights as: "…something which no one may be deprived without a great affront to justice. There are certain deeds, which should never be done, certain freedoms, which should never be invaded, some things which are supremely sacred.[18] According to Ibidapo-Obe[19], human rights are the specie of rights, which are recognized as appertaining to man by the very nature of his humanity. Notwithstanding how we may describe human rights, the unimpeachable fact remains that they are not gifts of any ruler because, as the Latin Maxim has it: *"Nemo dat quod non habet*" meaning, you cannot give what you do not have.

On his own part, Gerwith,[20]an American philosopher, a professor of philosophy, defines human rights as those rights which are personally oriented and are normatively necessary moral requirements. Human rights are described as being 'personally oriented' so as to portray the fact that these are requirements that are owed to distinct subjects or individuals. The point of saying that the rights are normatively necessary is to indicate that compliance with them is normally mandatory. Such mandatory element distinguishes human rights from virtues whose moral status may be optional, for instance, generosity or charity.

Human rights have also been described as inalienable. *The following text is a transcription of the stone engraving of the parchment Declaration of Independence (the document on display in* the Rotunda at the National Archives Museum. *It reflects the wordings of* the delegates to the American Declaration of Independence, in 1776 and it says inter alia: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain

[17] F E Dowrick, *Human Rights, Problems, perspectives and Texts* (Westmead: Saxon House, 1979) pp. 8-9

[18] M Cranston, *'Human* Rights Real and Supposed', in Raphael (Ed.), *Political Theory and the Rights of Man*, (Bloomington:IndianaUniversity Press,1976),p.52.

[19] A. Ibidapo-Obe, 'Human Rights and State Security: The Nigerian Experience', (1995) 5 (1) *Journal of Human Rights Law and Practice*, 86.

[20] Alan Gewirth, was born on November 28, 1912 and he died on May 9, 2004. He was an American philosopher, a professor of philosophy at the University of Chicago, and author of *Reason and Morality* (1978), *Human Rights: Essays on Justification and Applications* (1982), *The Community of Rights* (1996), *Self-Fulfillment* (1998), and numerous other writings in moral philosophy and political philosophy.

inalienable rights that among these are life, liberty, and the pursuit of happiness…"[21]

2.2 Classification of Human Rights

The concept of human rights is dynamic. As they keep evolving, they have been classified according to the period they emerged or were recognized. There are basically three stages in the development of human rights, though some writers have argued that there are so many other stages. These stages are referred to as 'generations'. In essence therefore, human rights are generally categorized into three sets or generation, which covers a wide spectrum of items necessary for human existence:

a. The first generation of human rights – civil and political rights which include the liberty-oriented rights set out in Article 2-21 of the Universal Declaration of Human Rights. Other rights included in the first generation of human rights are all the rights guaranteed under Chapter IV of the 1999 Constitution of Nigeria (as amended) which include: the right to life, right to liberty and right to freedom of speech. These rights envisage negative obligations[22] on the government not to interfere with them; hence they are called negative rights.

b. The second set/generation of human rights goes beyond political and civil rights. This generation of human rights deals with social, economic and cultural rights. For instance, it includes property rights, work rights, right to an adequate standard of living - that includes food, clothing, housing, medical care and essential social services. This set of rights is also referred to as positive rights as it provides guidelines to the government and individuals to take actions to safeguard them.

c. The third set/generation of human rights is referred to as collective or solidarity or people's rights. Under this set of rights as stated in Article 28 of the Universal Declaration of Human Rights, 'every person is entitled to a social and international order in which human rights …can be fully realized.' The rights under this generation include the right to development; the right to share in common heritage of mankind; right of self-determination; right to national peace and security and right to clean and healthy environment;

All these rights are interrelated and interdependent; denial of one right affects the other. However, human rights are also not static as new rights are recognized and enforced from time to time as per the need of the society. For instance, scholars are emphasizing on the fourth generation of human rights which they claim concerns genetic engineering and encroachment of technology on human rights.

3. International Human Rights Instruments

Among the key international human rights instruments are:

a. The United Nations Charter (1945),[23]

[21] See <https://history.state.gov/milestones/1776-1783/declaration> accessed on May 12 2024.

[22] Negative obligation is one by which a state is required to abstain from interfering with or violating human rights. On the other hand, a positive obligation is one whereby a state must take action to secure human rights and is generally associated with economic, social and cultural rights. However, positive obligation can also be imposed in respect of civil and political rights such as the obligation to protect life by law, to provide prison conditions that are not inhuman. See D Harris *et al.* 'Law of the European Convention on Human Rights 1995.' Quoted in U Essien, *"The Nigerian Judiciary and Human Rights Protection"*. (1997) 1 *JHRLP* .6.

[23] See <https://www.un.org/en/academic-impact/un-charter> accessed June 14 2024.

b. The International Covenant on Civil and Political Rights (ICCPR) (1976),[24]

c. The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976),[25]

d. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1969),[26]

e. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981),[27]

f. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987),[28]

g. The Convention on the Rights of the Child (CRC) (1990),[29]

h. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (2003),[30]

i. The International Convention on the Rights of Persons with Disabilities (2008),[31]

j. International Convention for the Protection of All Persons from Enforced Disappearance (2010).[32]

These treaties create obligations on States Parties to establish and enact laws promoting and protecting human rights at the national level. For the purpose of this paper, emphasis would be laid on the United Nations Charter of 1945 and Universal Declaration on Human Rights (UDHR), 1948.

3.1 The United Nations Charter (1945)

The Charter of the United Nations is the founding document of the United Nations. It was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.[33] The Charter of the United Nations commenced with reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion, constitutes one of the purposes of the United Nations'[34]

The United Nations can take action on a wide variety of issues due to its unique international character and the powers vested in its Charter, which is considered an international treaty. As such,

[24]Ogbu (n 10).
[25]Ibid. p.19.
[26]Ibid. p. 23
[27]Ibid.
[28]Ibid.
[29]Ibid.
[30]Ibid.
[31]Ibid.
[32] See <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-allpersons-enforced> accessed June 14 2024.
[33] 'Peace, Dignity and Equality on a Healthy Planet', < https://www.un.org/en/about-us/un-charter > accessed 14 June 2024.
[34] Article one paragraph 3 of the United Nations Charter 1945.

the UN Charter is an instrument of international law, and UN Member States are bound by it. The UN Charter codifies the major principles of international relations, from sovereign equality of States to the prohibition of the use of force in international relations.[35] Since, the coming into being of the UN in 1945, the mission and work of the Organization have been guided by the purposes and principles contained in its founding Charter, which has been amended three times in 1963, 1965, and 1973.

The guarantee of human rights was one of the reasons for which the allied forces fought, with the world war ending in 1945 marked by the signing of the UN Charter of 1945.[36] The encouragement and protection of human rights for all without distinction as to race, sex, language or religion became one of the purposes of the United Nations, and the Charter of the United Nations imposed obligations on member states to this end. The United Nations Charter therefore ushered in a new international law of human rights. This new law buried the old dogma that the individual is not a subject of international politics and law and that a government's behavior towards its own nationals is a matter of domestic concern and should not attract international intervention.[37]

The activities of the United Nations with regard to human rights may be classified into three main phases. The first phase which began almost immediately after the Second World War is between (1947-1954). It is classified as the period of standard setting. The next phase is the period of promotion (1955-1966) and then the (1967 till date) is the period of protection. Each phase was dominated by the activity for which the given name represents.

3.2 The Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights is generally agreed to be the foundation of international human rights law. Adopted in 1948, the UDHR has inspired a rich body of legally binding international human rights treaties. It continues to be an inspiration to us all whether in addressing injustices, in times of conflicts, in societies suffering repression, and in our efforts towards achieving universal enjoyment of human rights. It represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free and equal in dignity and rights. Whatever our nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status, the international community on December 10 1948 made a commitment to upholding dignity and justice for all of us.

The UDHR at the time of adoption did not impose legally binding obligation on member states. It was only symbolic and represents aspirations to which member states strive to attain. Although the UDHR is not a treaty, over the years, it has developed to become a basic component of the customary international law, which is binding on all states, including non-member states of the United Nations.[38] Today, the UDHR is considered an authoritative interpretation of the UN

[35]One of the most important principles of international law is the prohibition against the use of force. This rule is codified in Article 2(4) of the United Nations Charter. Article 2(4) provides that a UN member state cannot threaten or use force against the territorial integrity or political independence of another state, or in any way that diverges from the purposes of the UN.

[36] See <https://www.un.org/en/model-united-nations/history-united-nations.> accessed June 14 2024. See also I Brownilie, *Treaties and indigenous Peoples: The Robb Lecture Brookfield (ed)* (Oxford: Clarendon Press, 1992) p.1

[37] C.A. Oputa, *Human Rights in the Political and Legal Culture of Nigeria, 2nd idigbe Memorial Lectures* (Lagos: Nigerian Law Publication Ltd., 1988) p. 136.

[38]Ogbu (n 10).

Charter, spelling out in considerable details the meaning of the phrase "human rights and fundamental freedoms", which member states agreed in the Charter to promote and observe. The UDHR has therefore joined the UN Charter to be part of the constitutional structure of the international community.

The UDHR is an authoritative definition of human rights. It clearly laid down the principles and norms of securing respect for the rights of man everywhere in the world. The UDHR has been described as the greater charter of liberties and a common standard of achievement for all people. It represents a milestone of the struggle for human rights. It represents a common statement of goals and aspirations – a vision of the world as the international community would want it to be. The UDHR has inspired over 60 instruments which, together constitute an international standard for human rights.[39]

The rights mentioned in the Charter were elaborated in the UDHR. And they include the first and second generation of human rights. The first-generation rights mentioned in the UDHR include the rights to: life. Liberty, security of persons, freedom from slavery and servitude, freedom from torture, cruel, inhuman or degrading treatment; recognition as a person; remedy for acts violating fundamental rights; liberty, fair hearing; privacy, movement; asylum and nationality, marry and found a family; property; freedom of thought; conscience and religion; freedom of expression; freedom of assembly and association; participate in government, and equal access to public service.

Also contained in the UDHR is the second generation of rights. They include the right to social security; work under just and favorable conditions; rest and leisure; adequate standard of living, education; participate in the cultural life of the community; to enjoy arts and share in scientific advancement and its benefits. This explains why a one-time Attorney-General and Chief Justice of Nigeria and a judge and President of the International Court of Justice, Elias said:

> *It seems that the Universal Declaration of Human rights of 1948 may come to be judge as perhaps the most important document to have emerged from the UN Organization as the foundation of its existence and indeed its raison d'etre. If we give a political document a biological interpretation, it is the nucleus of an organism which is in the process of rapid growth to great dimensions b y its own inner dynamism.*[40]

4. The Theory of Universality of Human Rights

The theory of Universality of human rights is the idea that human rights are the same everywhere. The universalists argue that human rights defy geographic location and applies to every human being despite their colour, creed, religion, or even the society or government they may find themselves in. As a result of this idea, no individual, state, religious or other groups should be denied the enjoyment of human rights.[41] It is important to note that the Universal Declaration of Human Rights of 1948,[42] being the first Bill of Rights, affirmed the universality of Human Rights, upholding the view that the promotion and protection of human rights was an obligation on the

[39] See 50th Anniversary of the UDHR, UN, document NO. DPI/1937/A-97-33083 of Feb. 1998.
[40] T O Elias, *Horizons in International Law* (Netherland: Sijthoff & Noordhoff International Publishers, 1979) p 162
[41] C Lalumiere, "Human Rights at the Dawn of 21st Century" in A.O. Obilade,(ed) *Text for Human Rights Teaching in Schools* (Lagos: Constitutional Rights Project, 1999) p. 13.
[42] See <https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf,> accessed on May 26, 2024.

members of the international community. This was also affirmed by the Vienna Declaration adopted in 1993 by the World Conference on Human Rights[43]

At the 1993 World Conference on Human Rights, Member States adopted the Vienna Declaration and Programme of Action[44] by consensus. This key instrument states clearly in its first paragraph that "the universal nature of these rights and freedoms is beyond question." It goes on to clarify the issue in paragraph 5, dispelling questions that arose earlier in the UN's preparatory conferences thus:

> *All human rights are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.*[45]

The Vienna Declaration thus reiterates what the 1948 Universal Declaration of Human Rights proclaimed that human rights are universal and belong to each individual. How those rights are implemented has, of course, been the focus of domestic legislation and policies, reflecting the provisions of binding international treaties and conventions. As long as human rights do not fall below the universal norm, many diverse means of implementing these universal human rights can provide adequate protection for the individual rights holder. Although, the Vienna Declaration clarified the universality of human rights, the notion of fundamental, inalienable rights endowed to each person regardless of race, sex, religion, nationality, or any other factor, has sometimes been challenged by academics or government officials making arguments of cultural relativism.

5. The Theory of Cultural Relativity of Human Rights

The debate over whether, and to what extent human rights are universal or culturally relative was for the most part in the last two decades, the dominant theme in the global human rights discuss. The core of the debate is whether modern human rights conceptions are of universal character and applicability or whether they are culturally relative. Simply put: are human rights of universal viability and applicability or are they better understood and evaluated within specific social and cultural contexts? What level of cultural specificity can be accommodated within the emerging global human rights regime to accord it cultural legitimacy within various societies? This debate proceeds partly from the various International human rights documents, particularly United Nations Instruments on human rights which despite the obvious western influence in their formulation, declare their contents to be universal, inalienable and cross-culturally valid.

The relativists argue that there are no such things as universal human rights, as all beliefs and values are culturally relative and therefore apply only within certain cultures. Relativists are of the

[43] Also the world leading authorities in international law that gathered in Maastricht, the Netherlands from 2nd to 6th June 1986, under the aegis of International Conference of Jurists came out with what is known as the Limburg Principles which states that all human rights are indivisible and interdependent.

[44]The Vienna Declaration and Programme of Action (VDPA) is a human rights declaration adopted by consensus at the World Conference on Human Rights on 25 June 1993 in Vienna, Austria. The position of United Nations High Commissioner for Human Rights was recommended by this Declaration and subsequently created by General Assembly Resolution 48/141.

[45] Paragraph 5 of the Vienna Declaration and Programme of Action (VDPA), 1993.

view that ethical systems develop in the context of local cultures and that universal applicability should not be assumed. In their view, human rights are not the same everywhere, but rather they are relative to the given society. One of the proponents of this view is Herman Klenner.[46]

The core idea behind human rights, which holds that government is limited by a need to respect minimum entitlements of individuals has a long history. Its root can be traced to natural law. The ancient concept of natural law concerns an evaluation of the validity of human law against some higher sources of authority, whether theological or secular, which is both eternal and universal. The natural law challenged the law of human rulers and demanded that human laws should conform to it and if not, the human law was deemed to be perverse. The Stoics propounded that by law of nature all men are equal and are created by a common creator with the ability to think and know what is right. Since all men are created equal, they should be treated the same, no reason for distinction between them. The concept of universalism of human rights was based on the theory of natural law. It simply implied that human rights belonged to all human beings wherever they lived on earth. It should be enjoyed by all without any discrimination or qualification, and it should be the same everywhere on earth. However, on the other hand, the proponents of the concept of cultural relativism of human rights argued that human rights are not universal but specific and relative based on culture and the environment in question. They disagreed on the thought that generalized human rights were the same everywhere.

5.1 Afrocentric Theory of Cultural Relativity of Human Rights

A lot of fundamental questions have been raised about the dynamics of African race and personality. African scholars are no longer comfortable with the views of some anthropologists and their presuppositions about what constitutes the humanity and the identity of Africans. African intellectuals seem to be mostly preoccupied with the defense of a unique "Africanness" leading to a kind of deification and glorification of Africa's past. Much as the past is relished to reminiscent where and how Africans started the journey to civilization, it has been argued that basking on it may not solve the myriads of problems confronting the contemporary Africa. In this way, the notion of a distinctive 'Africanness' or of cultural relativity that constitutes Africa as a continent 'set apart' is widely challenged especially by Western powers as they watch the development and transformation that she desires and which is also germane to her advancement among the comity of nations.

Some Africans have argued in support of Afrocentric conception of human rights, holding the view that the African traditional orientation does not know of a human being outside his community and culture.[47] Culture is germane in African society and indeed widely respected. In African society, there is undoubtedly a close and complementary relationship between the individual and society. This was more prevalent in the pre-colonial African society. The advent of colonialism and Western influence has tried to distort this relationship in the contemporary African society; however, the long standing Afrocentric cultural identity still holds sway.

6. Resolving the question of universality or Cultural Relativity of Human Rights

Commenting on the possible exceptions to the principle of universality of human rights, Umezurike[48] gave some examples *inter alia :* while the right to marry as the case may be in some

[46] H Klenner, 'Human Rights: A Battle Cry for Social Change or a Challenge to Philosophy of Law?'being a Paper circulated at the World Congress on Philosophy of Law and Social Philosophy, held at Sydney in 2013.
[47] Dworkin, (n 8).
[48] Ibid.

parts of the world involves only members of the opposite sex, gay or homosexual marriage is increasingly being recognized in the Western world as a human right. While death penalty has been abolished in some states as infringing on human rights, in some other states, it is legalized. To the Christians, change of one's religion is a fundamental human right, but to the Muslims, this constitutionally recognized human right is generally acceptable as an apostasy which attracts dare consequences.

Some attributes inure to every human being for the singular reason that they are human beings. Among such attributes are human rights. They are foreign to no culture. The values prevalent in human rights are simply common to all cultures.[49]Importantly, notwithstanding any given cultural practices, or ideologies, it should be noted that in other to provide for human dignity, certain values or rights must be recognized.[50] Little wonder then why Kofi Anan said:

> *Where or when have you heard of a free voice demand an end to freedom of speech? Where have you heard a victim of torture endorse the way of the torturer? Where can you find a slave advocating for slavery? Under what culture is life not sacrosanct? Under what culture can we say that life with dignity is not essential? One will recall here the apt words of Francis Voltaire. He said, "… I am a human being before I am a Frenchman. I am by necessity a human being, whereas I am a Frenchman only by chance.*[51]

Commenting on the issue of the seemingly exceptions to the principles of universality of human rights, Ogbu stated:

> *It is submitted that instead of regarding the above-mentioned cases as exceptions to the principle of universality of human rights, some of them should actually be considered violations of human rights while mothers are adulteration (or corruption) of human rights. For instance, some wrongs of yesterday and all sorts of bestiality are now being flaunted as human rights today in some societies. People now talk of gayism, lesbianism and homosexuality as human rights in some societies. This development is not healthy to the idea of universality of human rights as many societies will not accept them as human rights. The development constitutes a danger to the continued respect for the concept of human rights*.[52]

On the question of resolving the question of whether human rights are universal or culturally relative,[53] Ogbu further argued:

> *… the principle of universality of human rights is premised on the assumption that there is a minimum global standard for treating people by which state laws and practices are to be measured. Far from insisting on uniformity, the international bill of rights is the basic condition for global diversity. It is, however, conceded that the content and scope of human rights expand according to the dictates of*

[49] See 1948 UNESCO Roundtable Discussion.

[50] It is in recognition of this fact that Section 21 of the 1999 Constitution of Nigeria while enjoining the protection, preservation and promotion of Nigerian cultures put the caveat that it must be those cultures that enhance human dignity and are consistent with the fundamental objectives.

[51] Statement on the 50th Anniversary of the UDHR on 1-10 December, 1998, p.2.

[52] <https://history.state.gov/milestones/1776-1783/declaration> accessed on May 12 2024.

[53] See <https://www.geneva-academy.ch/joomlatools-files/docman-files/Briefing%2020_web.pdf.> accessed on May 26, 2024.

> *human experience, and the area of emphasis shifts in response to economic, socio-political, environmental and cultural variables.*[54]

The above argument by Ogbu sufficiently resolves the question of whether human rights are universal or culturally relative.

7. Conclusion

Granted, human rights are premised on the notion that there is a minimum global standard for treating people by which state laws and practices are to be measured. However, the current advocacy for universalism of human rights in every aspect of human right, for instance in the current debate about universalizing homosexuality, is a grave violation of international human rights principles of respect and protection of cultural rights or traditional values, self-determination and sovereignty of States. While acknowledging the need for a common minimum level in the treatment of individuals in different jurisdictions of the world, societies should be allowed to evolve with time and at their own pace on the civilization ladder.

[54]Ogbu (n 10).