LIMITATION OF HUMAN RIGHTS WITHIN THE CONTEXT OF GLOBAL CRISES – A PROBABLE POSSIBILITY

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ABSTRACT: Limitation of Human Rights within the Context of Global Crises – A Probable Possibility.

Human rights treaties and laws are designed to protect the inherent and universal rights of all people by affirming human value, dignity and the primacy of life. Religious freedom is one of the paramount universal human rights which needs to be asserted and protected. The world we live in can be defined as being in a continue state of crisis, or *permacrisis*. Various scholars warn that, in times of crisis, liberties and rights may be limited, and even suspended, and this would be done in order to preserve and facilitate local and global security. There are current developments whereby governments are considering the withdrawal from UN treaties in order to address political, economical and security concerns. Technology and digitalisation contribute to increased awareness about human rights while also compounding the exacerbation and deepening of the varying human crises we encounter today. Therefore, the responsibility to educate and inform society with respect to human rights and their importance needs to be shared across all spheres of public influence.

Keywords: *Human rights, religious freedom, liberty, safeguarding, security, times of crisis, treaties, laws, rights limitations, education, technology, digitalisation.*

Origins and Definition of Human Rights

The concept of human rights is as old as the history of human civilisation and has been developed, to different degrees, in most religious traditions. However, the term 'human rights' is relatively recent and "it has formally and universally been recognized only after the formation of the United Nations in 1945"[1]. Human rights refer primarily to rights pertaining to

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1   Kaur, S., "Historical development of human rights", *Journal of Social Sciences Research*, 6(2), 2014, p. 997.

liberty, human dignity, and, in more practical terms, to access to vital needs such as food, shelter, education, and health. Furthermore, they concern the right to sovereignty over natural resources and are meant to facilitate personal and community progress.[2] These rights are expressed as a moral and/or legal demand and are seen as inherent to human vulnerability.

Influential Philosophical Contributions

Human rights are often employed in the fight against oppression and aim to provide the promise of a fair and equitable society. Even though today they are recognised by and formulated within the framework of national and international law, human rights' origins are found in moral and philosophical thought. To begin with, the idea of liberty and the protection of human dignity can be traced to antiquity. However, the origins of human rights' philosophical conceptualisation are set in the 17th century, starting with John Locke's Second Treatise of Government (1690) where he affirmed that people enjoy a "state of liberty." Jean-Jacques Rousseau developed this idea in his essay on the Origin and Basis of Inequality Among Men or the Second Discourse (1755) in which he wrote that "it is plainly contrary to the law of nature … that the privileged few should gorge themselves with superfluities, while the starving multitude are in want of the bare necessities of life" (as quoted by Marks).[3]

In America, Thomas Paine called for equal rights among all citizens in his pamphlet Common Sense (1776), and in 1791 he further developed the idea of equal rights in Rights of Man, which was written as a defense of the French Revolution and in response to Edmond Burke's Reflection on the Revolution in France (1790). Karl Marx, on the other hand, considered the idea of human rights redundant as he "had a vision of a future community in which all needs would be satisfied, and in which there would be no conflicts of interests, and, therefore, no role for rights or their enforcement".[4]

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2   Ibid.
3   S.P. Marks, *Human rights: A brief introduction. FXB Centre for Health and Human Rights*. School of Public Health, Harvard University, 2016, pp. 2-3.
4   A. Clapham, *Human Rights: A Very Short Introduction*, Oxford, Oxford University Press, 2015, p.12.

Human Dignity and Ethical Concerns

Immanuel Kant found the justification for human rights and their importance in absolute moral principles, while Jürgen Habermas considered that "human dignity is the route to egalitarian and universalistic laws [whereby they] … bound up with the creation of democratic institutions that allow for a free flow of ideas and participation"[5]. Currently, there is scholarly consent that what human rights have in common is an ethical concern for just treatment, built on empathy and altruism.

What Human Rights Mean to People

Most people see human rights as a set of norms "governing the treatment of individuals and groups by states and non-state actors on the basis of ethical principles regarding what society considers fundamental to a decent life"[6]. In other words, human rights are meant to ensure fair treatment for all thus valuing people's inherent dignity and human worth. To other people, though, the upholding of human rights means that "judges, the police, and immigration officials are required to protect the interests of terrorists, criminals, and migrants at the expense of the security of the population".[7]

Religious Freedom

Sociologist Peter Berger (1999) famously wrote that we live in a "furiously religious" world, meaning that religious discrimination, intolerance, and conflict are recurring problems. Consequently, within this context, "It is of paramount importance that freedom of religion, and its limitations, be defined and protected in a coherent manner by international law"[8]. However, to define religious freedom is not an easy task. Thames *et al.* (2009) regard religious freedom as the most personal of rights, while Scolnicov highlights how both its theoretical and practical aspects converge and disperse simultaneously, as it concerns protecting identity and equality while also facilitating free expression and the freedom to criticise and be criticised.

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5   Ibid., p.15.
6   Ibid., p.1.
7   A. Clapham, *Human Rights: A Very Short Introduction*, Oxford, Oxford University Press, 2015, p.2.
8   A. Scolnicov, *The Right to Religious Freedom in International Law: Between group rights and individual rights*, London, Routledge, 2012, p. 219.

Marks (2016) acknowledges the universality of this right (as is true for many other rights) as well as its indebtedness to the prevailing values of each local context. He further expounds on the issue of compatibility between religious liberty as a human right and the special geopolitical specificities in Islam, for example. He also highlights the complexity of the religious sphere when he refers to the 'Arab Spring' of 2011, "in which both Islamic and human rights values motivated peoples across the Middle East and North Africa to overthrow deeply entrenched dictatorships, with very mixed results, and the emergence of extremist terrorist organizations claiming to act according to their interpretation of Islam."[9]

Various scholars also speak of the uniqueness of religious freedom as a right[10], with Thames *et al.* (2009) contending that, for the full enjoyment of this right, other rights need to be promoted and protected. Scolnicov (2012) regards freedom of religion as a "seeming contradiction in terms… [as] religion is a self-imposed constraint on freedom" (1). He goes on to highlight another aspect of this uniqueness as it brings together *belief* (which includes criticism and inquiry) and the *communitarian* aspect (which confers identity). Even though religion is often grouped within the social and cultural sphere, religious freedom is considered to be a *First Generation Right*[11] and seen as a civil and political right which government should not prohibit or limit.

Religious freedom is furthermore meant to guarantee the right to *forum internum*, which refers to the individual's personal convictions, but it is also summoned to protect the *forum externum* whereby individuals and groups of individuals practice and express their religious faith or lack of it. On this point, Scolnicov (2012) argues that religious rights can only be attributed to individuals and not to groups, and this is because "freedom of association is an individual right, although it cannot be practiced alone.

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9   S.P. Marks, *Human rights: A brief introduction. FXB Centre for Health and Human Rights.* School of Public Health, Harvard University, 2016, p. 12.

10   Ioan-Gheorghe Rotaru, "Religious liberty – a natural human right", in *Jurnalul Libertăţii de Conştiinţă*, Ganoune Diop, Mihnea Costoiu, Liviu-Bogdan Ciucă, Nelu Burcea (coord.), Les Arsc, France, Editions IARSIC, 2015, pp. 595-608.

11   Karel Vasak speaks of *First Generation Rights* (civil and political), *Second Generation Rights* (economic, social, and cultural), and *Third Generation Rights* (peace, development, and environment), in Thames *et al.*, 2009.

[And] freedom of expression is an individual right, although it, too, cannot be practiced alone."[12]

The Imperative to Protect Religious Freedom

According to Thames *et al.* (2009), the continuum for violations of religious freedom begins with *persecution* as ground zero:

Persecution—Repression—Harassment—Limitations—Discrimination.

The move from one phase of infringement to the other can happen very quickly and legislation is therefore necessary to address each of the phases and, ultimately, break the chain of rights' abuse, as illustrated above. It is generally accepted that the principle of religious freedom is as old as international law itself. Its modern legal framework, though, began with the League of Nations and the Minority Treaties after the First World War. Applying religious protection law is not straightforward with one of the challenges being that it "must be interpreted in light of the unique role religion plays as a source of authority independent of and [at times] competing with state authority"[13]

Thames *et al.* further argue that religious freedom cannot be taken for granted as "more than half of the world's population cannot fully enjoy this cherished fundamental freedom."[14] This is the case even in Western European countries, often regarded to be champions of freedom. The main cause cited for this situation is migration and immigration: "Some citizens and policymakers see these immigrants as a threat not only to national identity but potentially to national security, making displays of religiosity (such as the headscarf for Muslim women) extremely provocative."[15]. However, Thames *et al.* argue that national security is a false justification and that international agreements "do not recognize national security as a permissible justification to limit religious manifestations."[16]

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12   A. Scolnicov, *The Right to Religious Freedom in International Law: Between group rights and individual rights*, London, Routledge, 2012, p.25.
13   Ibid., p. 23.
14   H. K. Thames, C. Seiple and A. Rowe, *International Religious Freedom Advocacy: A Guide to Organizations, Law, and NGOs*, Waco, Baylor University Press, 2009, p.1.
15   Ibid., p.148.
16   Ibid., p.14.

The World We Live In

During the Communist regime in Romania, much of the agricultural produce was harvested within the villages' co-ops. The collectives had been formed by force with the State having seized people's private lands for the 'common good' of the community. This model of 'wealth distribution' was not favoured by the farmers and, when Communism collapsed, most people took back their lands. Today we witness another failed model of collectivisation: we live in an age of information overload with one of its consequences being the collectivisation of hurt.

Mass and social media bombard us with news of wars and rumours of wars where nations rise against nations, and kingdoms against kingdoms, and where there are famines, and pestilences, and pandemics, and earthquakes, and global warming, and social injustice[17]… The flood of information raises much awareness but, as we scroll from images of war to football scores, and then some meme, we are washed over with indifference. Our sense of social (dare I say Christian?) active duty has been numbed. Within the collective of hurt, we share a sigh and maybe utter a prayer, and then we move on thus transferring personal responsibility to some virtual, distant, impersonal, even ethereal 'other' to deal with it.

This is also because we live in a desensitised world where we have grown used to pain, where normal is being redefined constantly, where truth boundaries collide with identity boundaries, and where situational ethics compound the arbitrary moral placement dilemma. Our world is also defined by pluralism which, while conferring an open-market of ideas, it often polarises our society. Pankaj Mishra, in his book *Age of Anger: A History of the Present*, suggests that in this "worldwide mayhem, many intellectuals seem as lost as politicians today, their concepts and categories sounding more and more like ineffectual jargon" (Mishra, 2017:39). He then goes on to agree with academic and former Canadian politician Michael Ignatieff who confesses that we cannot explain any longer the world that we live in.

An attempt to explain it would be that we live in a continuous state of crisis, or *permacrisis*.

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17   Matthew 24:6-7.

Human Rights in Times of Crisis

Where does this leave human rights? According to Clapham, one of the key roles for human rights is to protect people from the "tyranny of the majority", and this is because *all* "human beings are endowed … with certain fundamental and inalienable rights".[18] However, this view is not shared by all social analysts. For example, Yuval Noah Harari does not see human rights as inherent to us. During a speech on Artificial Intelligence (AI) and the future of humanity he stated that "Human rights are not a biological reality; they are not inscribed in our DNA. Human rights is something that we created with language by telling stories and writing laws".[19]

The view that rights are not an inherent trait of humanity is becoming more prevalent and this requires increased intentionality in advocacy and their protection. This is especially true in times of crisis such as this. Ramraj *et al.* (2012) highlight that 'times of crisis' may warrant the promulgation and implementation of emergency legislation which could, potentially, lead to the limitation and infringement of citizens' freedoms. Even though these legal measures would initially be temporary, the danger is in them becoming a "permanent features of the legal landscape"[20]. Ramraj *et al.* also question the vague formulations and the limitless application of such laws: "Governments seem all too vulnerable to the pressure to react to [in this case] terrorist violence with legislation and they will ensure that the legislature is given as little opportunity as possible to impede the swiftness of that response."[21]

The implication is that, in 'times of crisis', fundamental liberties (including religious liberties) could be limited and even suspended. Such situations are a threat to democracy and the society's commitment to civil liberties. Ross Corbett (2012) agrees that in times of crisis liberties and even laws may have to be suspended and the state be endowed with emergency

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18   A. Clapham, *Human Rights: A Very Short Introduction*, Oxford, Oxford University Press, 2015, p.5.
19   Y.N. Harari, *AI and the Future of Humanity. Lecture at the Frontiers Forum*, 2023. Available at https://www.youtube.com/watch?v=LWiM-LuRe6w. [Accessed 19 September 2023].
20   V. Ramraj, M. Hor, K. Roach and G.Williams (eds.), *Global Anti-Terrorism Law and Policy*, Cambridge, Cambridge University Press, 2012, p. 165.
21   Ibid., p. 181.

powers. This brings into focus the quote attributed to US President Benjamin Franklin: "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety."

Plausible Solutions

Within the context to today's global crises, there are three plausible areas of focus and concern which could form the basis for a proposed solution to the need to affirm freedom and human rights. They are:

1. Creating awareness about human rights needs to be coupled with grassroots advocacy and direct involvement. Awareness alone does not suffice; governments, NGOs, and religious bodies need to work together and be actively involved in promoting, defending, and upholding human rights where and when they are being neglected or infringed upon. The existence alone of human rights laws and treaties does not necessarily guarantee their observance and application. Varying political and economic circumstances could lead governments to decide the withdrawal from such treaties thus deeming them inefficient in their applicability and enforcement. A current example in this respect is the South African government's plan to 'temporarily' withdraw from UN refugee treaties in order to address the continually increasing national crisis of immigration and thus formulate new logistical strategies for deportations.[22] Adding security concerns to political and economic motivations could propel the probability of such trends into the realm of normalcy or standard practice.

2. Education and monitoring are paramount. The responsibility to educate and inform needs to be shared across all spheres of public influence. As a religious leader, I recognise that religion has been used in the past, and it can be used today, either as an agent for peace and justice or as a means for suppression and oppression. The choice is ours, and by defending and protecting the freedom of those discriminated against (whomever they may be), while upholding values such as human dignity and the primacy of life, we defend and uphold the freedom of all.

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22 B. Farmer, "South Africa rips up UN refugee treaties in order to curb immigration", *The Telegraph* (20 November 2023). Available at https://www.telegraph.co.uk/world-news/2023/11/20/south-africa-withdraw-un-refugee-treaties-immigration/. [Accessed 3 December 2023].

3. Technology and digitalisation permeate every layer of human interaction today. Many see technological advancement as the next stage in human evolution. Ray Kurzweil, Marc O'Connell, Elise Bohan, Yuval Noah Harari (to name a few) foresee a future where transhumanism would address today's major crises by eradicating war and famine, and by transcending biology thus solving 'the modest problem of death'. Furthermore, Harari believes that AI has already hacked the operating system of human civilisation and it has done that by controlling and manipulating language. Thus one of our greatest challenges in these times, in relation to human rights, is for us to control the narrative of change and development and, in the fight for human freedom, to preserve the very essence of our own humanness.

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